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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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

[INS No: 1393–92]

RIN 1115–AD19

Ports of Entry for Aliens Arriving by Aircraft

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule corrects the names of the airports located in Brownsville and McAllen, Texas. The changes update 8 CFR 100.4 to reflect current airport listings. The rule is necessary to inform the public traveling by aircraft of designated ports of entry.

EFFECTIVE DATE: July 15, 1993.

FOR FURTHER INFORMATION CONTACT: Ira L. Frank, Senior Special Agent, Investigations Division, Immigration and Naturalization Service, 425 I Street NW., room 2207, Washington, DC 20536, telephone (202) 514–0747.

SUPPLEMENTARY INFORMATION: The names of the airports located in Brownsville and McAllen, Texas, have changed and are corrected by this rule.

The Service's implementation of this rule as a final rule, is based upon the "good cause" exception found at 5 U.S.C. 553(b)(A)–(B) and (d)(3). The reason and the necessity for immediate implementation of this final rule is that the changes made are administrative in nature and do not affect existing practices. A notice and comment period for a proposed rule would have been impracticable and unnecessary.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 100

Administrative practice and procedure, Organizations and functions (Government agencies).

Accordingly, part 100 of chapter I of title 8 of the Code of Federal Regulations will be amended as follows:

PART 100—STATEMENT OF ORGANIZATION

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

Authority: 8 U.S.C. 1103; 8 CFR part 2.

2. In § 100.4(c)(3), District No. 40, is revised to read as follows:

§ 100.4 Field Service.

* * * * *

(c) * * *

(3) * * *

District No. 40—Harlingen, Texas.

Brownsville, TX, Brownsville/South Padre Island International Airport

McAllen, TX, McAllen Miller International Airport

* * * * *

Dated: April 28, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–16785 Filed 7–14–93; 8:45 am]

BILLING CODE 4410–10–M

8 CFR Part 212

[INS No. 1398–92]

Guam Visa Waiver Program; Taiwan

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule temporarily adds Taiwan to the list of countries that meet the eligibility criteria for the Guam Visa Waiver Program, implemented under the Omnibus Territories Act of 1986. This rule facilitates the travel of citizens of Taiwan to visit Guam under certain conditions. It enables citizens of Taiwan who begin their travel in Taiwan and who are in possession of Taiwanese National Identity Cards, in addition to valid Taiwanese passports, to visit Guam as nonimmigrant visitors for up to fifteen days for business or pleasure without first obtaining nonimmigrant visitor visas at American consulates abroad. The inclusion of Taiwan in the Guam Visa Waiver Program will be evaluated after six months and a determination will be made whether to make Taiwan's inclusion in the program permanent.

DATES: This rule is effective July 15, 1993 through July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Ronald J. Hays, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW., room 7228, Washington, DC 20536, Telephone number: (202) 514–3996.

SUPPLEMENTARY INFORMATION: Under section 212(l)(1) of the Immigration and Nationality Act, certain visitors from designated countries may visit Guam for up to fifteen days without having to obtain nonimmigrant visitor visas from American consulates outside the United States.

First implemented on October 1, 1988, this program resulted in the arrival of thousands of nonimmigrant visitors from Australia, Brunei, Burma, Indonesia, Japan, Malaysia, Nauru, New Zealand, Papua New Guinea, the Republic of Korea, Singapore, the Solomon Islands, the United Kingdom (including citizens of the colony of Hong Kong), Vanuatu and Western Samoa, visiting Guam under the conditions mentioned above. In addition to the geographic proximity to Guam, these countries met the other three criteria for selection, including posing no threat to the welfare, safety, or security of the United States, its territories or commonwealths.

Since Taiwan's inclusion in the program is subject to potential abuse by non-Taiwanese attempting to enter the United States illegally, only citizens of Taiwan in possession of Taiwanese National Identity Cards in addition to valid Taiwanese passports who begin their travel in Taiwan on direct non-stop flights to Guam are included in the Guam Visa Waiver Program. Taiwan will be included in the Guam Visa Waiver Program for one year. After the first six months, the Immigration and Naturalization Service (the Service) will evaluate Taiwan's inclusion in the

program to determine whether the inclusion should be made permanent.

The Service's implementation of this rule as an interim rule is based upon the "good cause" exception found at 5 U.S.C. 553 (b)(3) and (d)(3). The reasons and the necessity are as follows: this rule relieves a restriction and is beneficial to both the traveling public and United States' businesses. This rule will also allow the Service to monitor and evaluate the program in relation to Taiwan's entry to ensure that abuse by non-Taiwanese trying to enter the United States illegally does not occur.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 212

Administrative practice and procedures, Aliens, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1225, 1226, 1228, 1252; 8 CFR part 2.

§ 212.1 [Amended].

2. Effective July 15, 1993 through July 15, 1994, § 212.1, paragraph (e)(3) is amended by adding the phrase "Taiwan (limited to citizens in possession of Taiwanese National Identity Cards in addition to valid Taiwanese passports who begin their travel in Taiwan and who travel on direct non-stop flights from Taiwan to Guam)," immediately after the phrase "Solomon Islands,".

Dated: May 12, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

Dated: May 28, 1993.

David L. Hobbs,

Acting Assistant Secretary of State for Consular Affairs, Department of State.

Dated: May 20, 1993.

Leslie M. Turner,

Assistant Secretary for Territorial and International Affairs, Department of the Interior.

[FR Doc. 93–16714 Filed 7–14–93; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 91–019F]

RIN 0583–AB37

Listing of Minor Ingredients in Other Than Descending Order of Predominance

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to allow product ingredients present at individual levels of 2 percent or less by weight to be listed in the ingredients statement in other than descending order of predominance. The final rule will allow manufacturers to adjust ingredients in a formulation present at 2 percent or less without resubmitting the labeling for new approval each time such an adjustment is made. This rule is in response to a petition submitted by the National Food Processors Association (NFPA).

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Director, Food Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2590.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) for imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat poultry products that are in addition to, or different than, those imposed under the FMIA and PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements on State inspected products and establishments that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

This rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR 335 and Part 381, Subpart W, must be exhausted prior to any judicial challenge to the application of the provisions of this rule with respect to labeling.

Effect on Small Entities

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

The rule will make it optional for manufacturers of meat and poultry products containing ingredients at levels of 2 percent or less by weight to list such ingredients in the ingredients statement in other than descending order of predominance. Current regulations require all ingredients of meat and poultry products to be listed in the order of predominance (9 CFR 317.2(f) and 381.118(a)). Manufacturers opting to list their ingredients in other than descending order of predominance will have to revise their product labels to include a quantifying phrase at the end of the ingredients statement and submit the revised labels to FSIS for approval. This would entail a one-time expense of approximately $1000 in labeling costs for each product. All meat and poultry products, except single-ingredient products, would qualify for this type of labeling. All small entities producing products other than single-ingredient products will be affected by this rule if they choose to label their products in this manner. Once initial approval has been given by FSIS on the revised labels, manufacturers will be allowed to adjust ingredients in a formulation present at 2 percent or less without resubmitting the labeling for new approval each time such adjustment is made. As a result, such manufacturers will save $1000 every time such an adjustment is made in the formulation. These savings, accruing to affected establishments after the initial formulation change for each product, will greatly exceed any initial costs. In addition, the number of labels received by the Agency will be reduced, to some extent, redirecting Agency resources to more significant label reviews.

Background

National Food Processors Association Petition

FSIS was petitioned by the National Food Processors Association (NFPA), Washington, DC, to allow ingredients present in a product at levels of 2 percent or less by weight to be listed in other than descending order of predominance. (A copy of the petition is available for review in the FSIS Hearing Clerk's office.) The petitioner contended that the amendment to the Federal meat and poultry products inspection regulations would reduce the number of label changes currently required of industry, would ease the backlog of labels to be reviewed by the Food Labeling Division (FLD) when minor formulation changes are made. The requested regulation change is consistent with the Food and Drug Administration's (FDA) regulation at 21 CFR 101.4(a)(2).

Current Statutory and Regulatory Requirements

Sections 1(n)(7) of the Federal Meat Inspection Act (21 U.S.C. 601(n)(7)) provides that any carcass, part thereof, meat or meat food product is misbranded "if it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by regulations of the Secretary under section 7 of this Act unless (A) it conforms to such definitions and standards, and (B) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavorings, and coloring) present in such foods." Section 1(n)(9) (21 U.S.C. 601(n)(9)) further provides that any carcass, part thereof, meat or meat food product is misbranded "if it is not subject to the provisions of subparagraph (7), unless its label bears (A) the common or usual name of the food, if any there be, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; * * *" Section 4(h) (7) and (9), respectively, of the Poultry Products Inspection Act (21 U.S.C. 453(h) (7) and (9)) contain similar provisions for any poultry product.

Furthermore, the Federal meat and poultry products inspection regulations specify that ingredients in the ingredients statement must be listed in their order of predominance. Section 317.2(f)(1) of the Federal meat inspection regulations (9 CFR 317.2(f)(1)) provides that the list of ingredients shall show the common or usual names of the ingredients arranged in the descending order of predominance, with a few minor exceptions. Section 381.118(a) of the poultry products inspection regulations (9 CFR 381.118(a)) provides that the label shall show a statement of the ingredients in the poultry product if the product is fabricated from two or more ingredients, and that such ingredients shall be listed by their common or usual names in the order of their descending proportions.

The FDA regulation at 21 CFR 101.4(a)(1) provides that ingredients shall be listed by their common or usual name in descending order of predominance by weight. However, 21 CFR 101.4(a)(2) allows ingredients present in amounts of 2 percent or less by weight to be listed in other than descending order of predominance at the end of the ingredients statement.

The listing of such ingredients must be preceded by an appropriate quantifying statement, e.g., "Contains _____percent or less of _____," or "Less than _____percent of _____." The blank percentage within the quantifying statement shall be filled in with a threshold level of 2 percent, or, if desired, 1.5 percent, 1.0 percent, or 0.5 percent, as appropriate. No ingredient to which the quantifying phrase applies may be present in an amount greater than the stated threshold.

Proposed Rule

After reviewing the petitioner's request, FSIS determined that allowing ingredients present in a product at individual levels of 2 percent or less by weight to be listed in other than descending order of predominance would be in accordance with the provisions of the FMIA and PPIA and would not cause the product to be misbranded because the presence of all ingredients would still be identified in the ingredients statement. Therefore, on July 20, 1992, FSIS proposed to allow product ingredients present at individual levels of 2 percent or less by weight to be listed in other than descending order of predominance at the end of the ingredients statement (57 FR 31972). The listing of such ingredients by their common or usual names would have to be preceded by a quantifying statement such as "Contains _____percent or less of _____," or "Less than _____percent of _____." The percentage of the ingredient(s) would be filled in with a threshold level of 2 percent, 1.5 percent, 1.0 percent, or 0.5 percent, as appropriate. No ingredient to which the quantifying statement applies may be present in an amount greater than the stated threshold.

The provisions as stated above would apply to ingredients statements consisting of composite listing of ingredients or component listing of ingredients. When the component listing is used, the quantifying statement may appear at the end of each component's list of ingredients rather than at the end of the ingredients statement.

FSIS also proposed that establishments continue to comply with sections 318.7(c)(4) and 381.147(f)(4) of the regulations (9 CFR 318.7(c)(4) and 381.147(f)(4)) which list substances that are acceptable for use in the preparation of meat and poultry products. In addition, any adjustment in formulation of a standardized product would also be

required to comply with limits and conditions of use prescribed in 9 CFR part 319 or part 381, subpart P. Establishments would be required to notify the inspector-in-charge of any formulation changes, even though the label would not be submitted for approval.

Discussion of Comments

FSIS received 23 comments in response to the proposed rule. Fourteen comments were received from food processors, six from trade associations, one from a food consultant, one from a State Health Department official, and one from a meat and poultry wholesaler. All of the commenters supported the basic concept of the proposed rule because they believe that it will (1) Provide harmony between FDA regulations and FSIS regulations for ingredients that are present in amounts of 2 percent or less, (2) reduce industry's costs because of fewer label changes, (3) provide industry with more flexibility, and (4) be more informative to consumers. However, several commenters did raise issues related to modifying or eliminating the quantifying statement, resubmitting label transmittals, and providing formulation changes to inspectors. The issues raised by the commenters and the Agency's response to each issue are as follows:

1. Quantifying Statement

Four commenters suggested that FSIS consider allowing threshold levels higher than 2 percent. They suggested threshold levels of 3.5 percent, 5 percent, and 4–6 percent.

Although the suggested threshold levels may have some merit, FSIS notes that the majority of the commenters believe that the 2 percent threshold level provides a satisfactory balance between providing useful information to the consumer and the need to make minor formulation changes without additional approval. Also, FSIS believes that since FDA has promulgated similar regulations, it is important to maintain uniformity for all foods.

Three commenters suggested not requiring a quantifying statement for the labeling of minor ingredients because of space considerations. Two other commenters suggested that the quantifying statement be optional rather than mandatory, because all ingredients in the product would be declared on the label for the consumer regardless of the presence of a quantifying statement.

FSIS believes a quantifying statement provides valuable information about the presence of minor ingredients. The Agency believes that it is important to alert the consumer about the amount of the minor ingredients if the order of predominance of these ingredients is not maintained.

Two commenters suggested rewording the quantifying statement because they believe that the statement is inaccurate and misleading to consumers. Another commenter suggested using an asterisk in the ingredients statement, in place of the quantifying statement, to indicate that certain ingredients are present in amounts of 2 percent or less. Those ingredients present in amounts of 2 percent or less would be listed on an alternate panel rather than in the ingredients statement.

The proposed quantifying statements are only examples of acceptable statements. FSIS believes that the wording of the quantifying statement may vary and that various phrases can be used that provide the necessary information to the consumer. However, the Agency does not believe that the use of an asterisk in the manner suggested is desirable. Ingredients statements are usually displayed on an information panel, which is defined as the first usable panel to the right of the principal display panel. To allow the use of an asterisk directing the consumer to another panel would cause the consumer to search unnecessarily for the information.

One commenter suggested that FSIS harmonize its requirements with those of FDA by adding the phrase "or, if desired" after "2 percent" to the statement in the proposed rule that identifies the threshold levels; i.e., "The blank percentage within the quantifying statement shall be filled in with a threshold level of 2 percent, or, if desired, 1.5 percent, 1.0 percent, or 0.5 percent, as appropriate."

FSIS believes that its requirement to allow product ingredients present at individual levels of 2 percent or less by weight to be listed in the ingredients statement in other than descending order of predominance should harmonize with FDA's requirement. However, in this particular statement, the Agency does not believe that the "or, if desired," phrase is needed because the proposed statement makes it clear that the blank percentage can be filled in with either 2 percent, 1.5 percent, 1.0 percent, or 0.5 percent, whichever is appropriate.

2. Resubmitting Label Transmittals

One commenter pointed out that the proposal did not address the issue of resubmitting label transmittals (application forms) for minor formulation adjustments.

Manufacturers will be required to submit for initial approval product labeling, along with label transmittal forms, that illustrate the quantifying statements they wish to use. Once initial approval has been given, manufacturers may adjust ingredients in a formulation present at 2 percent or less without resubmitting the product labeling and label transmittal form for new approval each time such adjustment is made.

3. Providing Formulation Changes To Inspectors

Three commenters questioned the need to provide to the inspector-in-charge any adjustments to the product formulation when the level of all affected ingredients remains at or below 2 percent.

FSIS inspection personnel are responsible for assuring that an approved label is properly used and that the conditions of the approval are followed. Moreover, inspection personnel monitor product formulation to ensure that the amount of ingredients used comply with the regulations. In this regard, it is important that inspection personnel are apprised of all formulation changes to accurately assure that product is safe and not adulterated.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection.

9 CFR Part 381

Food labeling, Poultry inspection.

Final Rule

For the reasons discussed in the preamble, FSIS is amending 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations to read as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.2 is amended by adding a new paragraph (f)(1)(vi) to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(f)(1) * * *

(vi)(A) Product ingredients which are present in individual amounts of 2 percent or less by weight may be listed in the ingredients statement in other than descending order of predominance: *Provided,* That such ingredients are

listed by their common or usual names at the end of the ingredients statement and preceded by a quantifying statement, such as "Contains _____ percent of _____," "Less than _____percent of _____." The percentage of the ingredient(s) shall be filled in with a threshold level of 2 percent, 1.5 percent, 1.0 percent, or 0.5 percent, as appropriate. No ingredient to which the quantifying statement applies may be present in an amount greater than the stated threshold. Such a quantifying statement may also be utilized when an ingredients statement contains a listing of ingredients by individual components. Each component listing may utilize the required quantifying statement at the end of each component ingredients listing.

(B) Such ingredients may be adjusted in the product formulation without a change being made in the ingredients statement on the labeling, provided that the adjusted amount complies with § 318.7(c)(4) and part 319 of this subchapter, and does not exceed the amount shown in the qualifying statement. Any such adjustments to the formulation shall be provided to the inspector-in-charge.

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470, 7 CFR 2.17, 2.55.

4. Section 381.118(a) is revised to read as follows:

§ 381.118 Ingredients statement.

(a)(1) The label shall show a statement of the ingredients in the poultry product if the product is fabricated from two or more ingredients. Such ingredients shall be listed by their common or usual names in the order of their descending proportions, except as prescribed in paragraph (a)(2) of this section.

(2)(i) Product ingredients which are present in individual amounts of 2 percent or less by weight may be listed in the ingredients statement in other than descending order of predominance: *Provided,* That such ingredients are listed by their common or usual names at the end of the ingredients statement and preceded by a quantifying statement, such as "Contains _____ percent or less of _____," or "Less than _____percent of _____." The percentage of the ingredient(s) shall be filled in with a threshold level of 2 percent, 1.5 percent, 1.0 percent, or 0.5 percent, as appropriate. No ingredient to which the quantifying statement applies may be present in an amount greater than the stated threshold. Such a quantifying statement may also be utilized when an ingredients statement contains a listing of ingredients by individual components. Each component listing may utilize the required quantifying statement at the end of each component ingredients listing.

(ii) Such ingredients may be adjusted in the product formulation without a change being made in the ingredients statement on the labeling, provided that the adjusted amount complies with § 381.147(f)(4) and subpart P of this part, and does not exceed the amount shown in the quantifying statement. Any such adjustments to the formulation shall be provided to the inspector-in-charge.

* * * * *

Done at Washington, DC, on: July 9, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–16783 Filed 7–14–93; 8:45 am]

BILLING CODE 3410–DM–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Interest Rate for Determining Variable Rate Premium; Amendments to Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document notifies the public of the interest rate applicable to late premium payments and employer liability underpayments and overpayments for the calendar quarter beginning July 1, 1993. This interest rate is established quarterly by the Internal Revenue Service. This document also sets forth the interest rates for valuing unfunded vested benefits for premium purposes for plan years beginning in May 1993 through July 1993. These interest rates are established pursuant to section 4006 of the Employee Retirement Income Security Act of 1974, as amended. The effect of these amendments is to advise plan sponsors and pension practitioners of these new interest rates.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone (202) 778–8850 ((202) 778–8859 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: As part of title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from ongoing plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate. These interest rates are published by the PBGC in appendix A to the premium regulation and appendix A to the employer liability regulation.

The Internal Revenue Service has announced that for the quarter beginning July 1, 1993, the interest charged on the underpayment of taxes will be at a rate of 7 percent. Accordingly, the PBGC is amending appendix A to 29 CFR part 2610 and appendix A to 29 CFR part 2622 to set forth this rate for the July 1, 1993, through September 30, 1993, quarter.

Under ERISA section 4006(a)(3)(E)(iii)(II), in determining a single-employer plan's unfunded vested benefits for premium computation purposes, plans must use an interest rate equal to 80% of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. Under § 2610.23(b)(1) of the premium regulation, this value is determined by reference to 30-year Treasury constant maturities as reported in Federal Reserve Statistical Releases G.13 and H.15. The PBGC publishes these rates in appendix B to the regulation.

The PBGC publishes these monthly interest rates in appendix B on a quarterly basis to coincide with the publication of the late payment interest rate set forth in appendix A. (The PBGC publishes the appendix A rates every quarter, regardless of whether the rate has changed.) Unlike the appendix A rate, which is determined prospectively, the appendix B rate is not known until a short time after the first of the month

for which it applies. Accordingly, the PBGC is hereby amending appendix B to part 2610 to add the vested benefits valuation rates for plan years beginning in May of 1993 through July of 1993.

The appendices to 29 CFR parts 2610 and 2622 do not prescribe the interest rates under these regulations. Under both regulations, the appendix A rates are the rates determined under section 6601(a) of the Code. The interest rates in appendix B to part 2610 are prescribed by ERISA section 4006(a)(3)(E)(iii)(II) and § 2610.23(b)(1) of the regulation. These appendices merely collect and republish the interest rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that none of these amendments is a "major rule" within the meaning of Executive Order 12291, because they will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, Small businesses.

In consideration of the foregoing, appendix A and appendix B to part 2610 and appendix A to part 2622 of chapter XXVI of title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, (1988 and Supp. I 1989), as amended by sec. 12021, Public Law 101–508, 104 Stat. 1388, 1388–573.

2. Appendix A to part 2610 is amended by adding a new entry for the quarter beginning July 1, 1993, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2610—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From	Through	Interest rate (percent)
* * * * *		
July 1, 1993 .	September 30, 1993.	7

3. Appendix B to part 2610 is amended by adding to the table of interest rates therein new entries for premium payment years beginning in May of 1993 through July of 1993, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2610—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
* * * * *	
May 1993	5.48
June 1993	5.54
July 1993	5.45

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15 for the calendar month preceding the calendar month in which the premium payment year begins.

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for part 2622 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68, as amended by secs. 9312, 9313, Public Law 100–203, 101 Stat. 1330.

5. Appendix A to part 2622 is amended by adding a new entry for the quarter beginning July 1, 1993, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2622—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From	Through	Interest rate (percent)
* * * * *		
July 1, 1993 .	September 30, 1993.	7

Issued in Washington, DC, this 8th day of July 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–16824 Filed 7–14–93; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning August 1, 1993. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after August 1, 1993, which will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: August 1, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's

("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since April 1, 1993. This amendment adds to appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after August 1, 1993, which set reflects a decrease of ¼ percent in the immediate interest rate from 5 percent to 4¾ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after August 1, 1993, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, part 2619 of chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Set 105 of appendix B is revised and Rate Set 106 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (%)	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
* * *	*	*	*	*	*			
105	4–1–93	8–1–93	5.00	1.0425	1.0400	1.0400	7	8
106	8–1–93		4.75	1.0400	1.0400	1.0400	7	8

Issued in Washington, DC, on this 8th day of July, 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–16825 Filed 7–14–93; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from July 1, 1993, to September 30, 1993.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202–778–8850 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability

payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the interest rate of 6 percent, which will be effective from July 1, 1993, through September 30, 1993. This rate represents no change from the rate in effect for the second quarter of 1993. This rate is based on the prime rate in effect on June 15, 1993.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of subchapter F of Chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

2. Appendix A to part 2644 is amended by adding to the end of the table therein a new entry as follows:

Appendix A to Part 2644—Table of Interest Rates

* * * * *

From	To	Date of quotation	Rate (percent)
*	*	*	*
7/01/93	9/30/93	6/15/93	6

Issued in Washington, DC on this 8th day of July 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–16823 Filed 7–14–93; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This updates the table of interest rates issued by the Pension Benefit Guaranty Corporation (PBGC) for actuarial valuations of multiemployer pension plans following mass withdrawal. The rule adds to the table the rate series for August 1993.

EFFECTIVE DATE: August 1, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202–778–8820 (202–778–1958 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This rule amends the PBGC's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of August 1993.

The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2676 of subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates the new entries to read as follows:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month	The values for i_t are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
*	*			*			*		*			*		*		
August 1993	.055	.05375	.0525	.05125	.05	.0475	.0475	.0475	.0475	.0475	.045	.045	.045	.045	.045	.04

Issued at Washington, DC, on this 8th day of July 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–16822 Filed 7–14–93; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–93–035]

Special Local Regulations for Marine Events; Hampton Bay Days Festival; Hampton River, Hampton, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document implements 33 CFR 100.508 for the Hampton Bay Days Festival. The event will be held on the Hampton River. The special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATE: The regulations are effective from 7 a.m., September 10, 1993 until 7 p.m., September 12, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204 or Commander, Coast Guard Group Hampton Roads (804) 483–8567.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Hampton Bay Days, Inc. submitted an application to hold the Hampton Bay Days Festival on September 10, 11, and 12, 1993. The marine portion of the festival will consist of a parade of boats, water ski shows, and various type boat races. There will also be a fireworks display launched from within the regulated area. The regulations in 33 CFR 100.508 govern the activities of the Hampton Bay Days Festival held on the Hampton River in and around downtown Hampton, Virginia. Implementation of 33 CFR 100.508 also implements as special anchorage areas the spectator anchorages designated in that section for use by vessels during the event. Vessels less than 20 meters long may anchor in these areas without displaying the anchor lights and shapes required by Inland Navigation Rule 30 (33 U.S.C. 2030(g)). Since these regulations were specifically established to enhance the safety of the participants in and spectators of the marine portions of the Hampton Bay Days Festival the regulations are hereby implemented.

Dated: June 23, 1993.

W.T. Leland,

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

[FR Doc. 93–16700 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–93–036]

Special Local Regulations for Marine Events; Barnegat Bay Classic; Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document implements 33 CFR 100.502 for the Barnegat Bay Classic, an annual event to be held on August 21, 1993 in Barnegat Bay, between Island Beach and the mainland. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area.

EFFECTIVE DATE: The regulations are effective from 9:30 a.m. to 5 p.m., August 21, 1993. If inclement weather causes the event to be postponed, the regulations will be effective from 9:30 a.m. to 5 p.m., August 22, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Cape May (609) 884–6981.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR C. A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Barnegat Bay Powerboard Racing Association, Toms River, New Jersey, submitted an application to hold the Barnegat Bay Classic in Barnegat Bay between Island Beach and the mainland. The event will consist of approximately forty to fifty powerboats, ranging from 20 to 36 feet in length, racing on a designated course within the regulated area. Since these regulations were specifically established to enhance the safety of the participants in and spectators of the Barnegat Bay Classic, the regulations are hereby implemented. Waterborne traffic should not be severely disputed at any given time, because closure of the Intracoastal Waterway is not anticipated.

Dated: 23 June 1993.

W. T. Leland,

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

[FR Doc. 93–16702 Filed 7–14–93; 8:45 am]

BUILDING CODE 4910–14–M

33 CFR Part 100

[CGD 05–93–034]

Special Local Regulations for Marine Events; Night in Venice Boat Parade, Ship Channel and Great Egg Waterway, Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document put into effect the permanent regulations, 33 CFR 100.504 for the Night in Venice Boat Parade, an annual event to be held on July 17, 1993 in the Ship Channel and on the Great Egg Waterway, Ocean City, New Jersey. These special local regulations are needed to provide for the safety of the participants and spectators on navigable waters during this event. The effect will be to restrict general navigation in the regulated area.

EFFECTIVE DATE: The regulations are effective from 4:30 p.m. to 11:45 p.m., July 17, 1993.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Cape May (609) 884–6981.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The City of Ocean City, New Jersey, has submitted an application to hold the Night in Venice Boat Parade. The event will consist of approximately 125 vessels less than 65 feet in length. The parade will start at Ship Channel Buoy (4 LLNR 1160), cruise down the channel through Great Egg Waterway to Daybeacon 28 (LLNR 33865), and return to Great Egg Waterway Buoy 2 (LLNR 33800). Since these regulations were specifically established to enhance the safety of the participants in and spectators of the Night in Venice Boat Parade, the regulations are hereby implemented. Commercial traffic should not be severely disrupted at any given time, since commercial vessels will be permitted to transit the regulated area as the parade progresses.

Dated: June 23, 1993.

W.T. Leland,

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

[FR Doc. 93–16706 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–93–040]

Special Local Regulations for Marine Events; The Start of the Cock Island Race; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document implements 33 CFR 100.501 for the start of the Cock Island Race from the Portsmouth Seawall area of the Southern Branch of the Elizabeth River, Norfolk Harbor, Norfolk and Portsmouth, Virginia on July 17, 1993. The sailboats will race to Hampton Roads and return. These special local regulations are needed to control vessel traffic within the area due to the confined nature of the waterway and the expected vessel congestion during the starting of the races. The effect will be to restrict general navigation in the regulated area for the safety of participants in the races.

EFFECTIVE DATE: The regulations are effective from 8:30 a.m. to 5 p.m., on July 17, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705 (804) 398–6204, or Commander, Coast Guard Group Hampton Roads (804) 483–8568.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Ports Events, Inc., of Portsmouth, Virginia, submitted an application to hold the Cock Island Race. The race will consist of over 200 sailboats ranging from 22 to 60 feet. The sailboats will be divided into several classes. Each class will start at ten minute intervals from the Portsmouth Seawall area of the Southern Branch of the Elizabeth River, Norfolk Harbor, Norfolk and Portsmouth, Virginia on July 17, 1993, race to Hampton Roads and return. Because this is the type of event contemplated by these regulations, and because the safety of the participants would be enhanced by the implementation of the special local regulations for this regulated area, the regulations in 33 CFR 100.501 are being implemented for the start of the races.

Dated: June 28, 1993.

W.T. Leland,

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

[FR Doc. 93–16708 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–93–041]

Special Local Regulations for Marine Events; Blackbeard Pirate Jamboree; Town Point, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document implements 33 CFR 100.501 for the Blackbeard Pirate Jamboree to be held on the Elizabeth River at Town Point Park, Norfolk and Portsmouth, Virginia. The regulations are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations are effective from 11 a.m. to 3 p.m. and 8:30 p.m. to 10:30 p.m., July 31, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Hampton Roads (804) 483–8567.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Norfolk Festevents, Ltd. submitted an application to hold the Blackbeard Pirate Jamboree on the Elizabeth River at Town Point Park, Norfolk and Portsmouth, Virginia. The event will consist of a parade of sail followed by an orchestrated water drama with cannon fire between two vessels. Since many spectator vessels are expected to be in the area to watch the jamboree, the regulations in 33 CFR 100.501 are being implemented for the safety of life and property. The waterway will not be

closed for an extended period, therefore commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this document authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be opened for commercial vessels.

Dated: June 28, 1993.

W.T. Leland,

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

[FR Doc. 93–16709 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 07–92–008]

Special Local Regulations; St. Johns River, Intracoastal Waterway—Pablo Creek, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Greater Jacksonville Kingfish Tournament. Approximately 1,000 fishing vessels and pleasure craft, varying in size from 15 feet to 60 feet, are expected to participate in the tournament. The event will be held on the St. Johns River and on Pablo Creek, Florida, annually, the second or third week in July, on Thursday, Friday and Saturday. In the past, the Coast Guard established temporary special local regulations to protect the safety of life on the navigable waters during the effective times. However, due to the size and nature of the event, the Coast Guard now feels that a permanent description of the event and establishment of permanent regulations in the Code of Federal Regulations (CFR) would better serve the boating public by creating a permanent reference. These regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective August 16, 1993.

FOR FURTHER INFORMATION CONTACT: LCDR J.E. Tunstall, Group Commander, Coast Guard Group Mayport, Florida, at (904) 247–7301.

SUPPLEMENTARY INFORMATION: On March 2, 1992, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (57 FR 7348). Interested persons were requested to submit comments, and no comments were received.

Drafting Information

The drafters of these regulations are QM1 Kuykendall, Marine Event Petty Officer, Coast Guard Group Mayport, and LT Jacqueline M. Losego, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received. The final rule is unchanged from the proposed rule, except that the CFR section number originally assigned to the NPRM was incorrect and has been changed from § 100.35–07008, in the NPRM, to § 100.710, in this final rule.

Economic Assessment and Certification

This final rule is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule is so minimal that a full regulatory evaluation is unnecessary. This event is not expected to affect commercial activities on the St. Johns River or Pablo Creek.

Since the impact of this final rule is minimal, the Coat Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Coast Guard has considered the environmental impact of this final rule consistent with Section 2.B.2.08 of Commandant Instruction M16475.1B, and this final rule has been determined to be categorically excluded. Specifically, the Coast Guard has consulted with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding the environmental impact of this event, and it was determined that the event does not jeopardize the continued existence of protected species.

Federalism

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

List of Subjects in 33 CFR Part 100

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

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

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

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

2. Section 110.710 is added to read as follows:

§ 100.710 Annual Greater Jacksonville Kingfish Tournament

(a) *Regulated area.* A regulated area is established for the waters of the St. Johns River lying between an eastern boundary formed by St. Johns River Lighted Buoy 7 (LLNR 6665) position 30–23–56 N, 081–23–04 W, and Lighted Buoy 8 (LLNR 6670) position 30–24–03 N, 081–23–01 W, and a western boundary formed by Mile Point Lighted Buoy 24 (LLNR 6805) position 30–22–58 N, 081–27–21 W, and Pablo Creek Daybeacon 2 (LLNR 32605) position 30–22–52 N, 081–27–21 W, with the northern and southern boundaries formed by the banks of the St. Johns River. Then, from the western boundary on the St. Johns River, the regulated area continues south on the waters of Pablo Creek to the Atlantic Beach Bridge, Jacksonville, Florida.

(b) *Special local regulations.* A No Wake Zone is established on the waters of the St. Johns River lying between the eastern boundary formed by St. Johns River Lighted Buoy 7 and Lighted Buoy 8, and the western boundary formed by Mile Point Lighted Buoy 24 and Pablo Creek Daybeacon 2, with the northern and southern boundaries formed by the banks of the St. Johns River. A Minimum Wake Zone is established from the boundary formed by mile Point Lighted Buoy 24 and Pablo Creek Daybeacon 2, south on Pablo Creek to the Atlantic Boulevard Bridge.

(c) *Effective date.* The Commander, Seventh Coast Guard District, will publish a notice in the **Federal Register** and in the Seventh Coast Guard District Local Notices to Mariners that announces times and dates that this section will go into effect.

Dated: June 22, 1993.

William P. Leahy,

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

[FR Doc. 93–16710 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD01–93–036]

Drawbridge Operation Regulations; Apponagansett River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard is providing notice that the town of Dartmouth, Massachusetts, has been granted permission to temporarily deviate for sixty (60) days from the regulations governing the Padanaram Bridge over the Apponagansett River at mile 1.0 in Dartmouth, Massachusetts. The deviation permits scheduled openings on the hour from July 1, 1993, through August 29, 1993, rather than on the hour and the half hour. This temporary deviation is being implemented to evaluate the effects of changes requested by the town of Dartmouth, Massachusetts, on vehicular traffic and marine traffic.

DATES: The deviation is effective for 60 days from July 1, 1993 through August 29, 1993. Comments on the deviation must be received on or before October 29, 1993.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, room 628 at the John Foster Williams Building, 408 Atlantic Avenue, Boston, Massachusetts. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to the above address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this evaluation of possible changes to the regulations governing the Padanaram Bridge over the Apponagansett River by submitting written data, or arguments for or against this deviation. Persons submitting comments should include their name, address, identify this rulemaking (CGD–01–93–036) and give the reason for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period and determine whether to revise or eliminate the 60 day deviation. If it appears appropriate to the propose a permanent change to the regulations, the Coast Guard plans to publish a notice of proposed rulemaking which will again request comments during an additional comment period announced by a later notice in the **Federal Register**. Persons may submit comments by writing to the Commander (obr), First Coast Guard District listed under "ADDRESSES".

Background and Purpose

The Padanaram Bridge over the Apponagansett River between Dartmouth and South Dartmouth has a vertical clearance of 9′ above mean high water (MHW) and 12′ above low water (MLW).

The Town of Dartmouth has requested a change from the present operating regulations in 33 CFR 117.587 which allow the Padanaram Bridge to open on the hour and half hour. The town selectmen feel that the vehicular traffic resulting from the bridge opening every 30 minutes, is causing village commence to suffer. The selectmen also consider the 30 minute opening schedule a serious risk to public safety because emergency vehicles can not travel to and from South Dartmouth during the traffic delays created when the bridge opens every half hour. The town of Dartmouth requested that the bridge be required to open only on the hour for a test period of 60 days to evaluate the effects on vehicular and marine traffic. The temporary deviation will retain the provisions of paragraph (a)(1) for the bridge to open on signal as soon as possible for vessels of the United States, state and local vessels used for public safety and vessels in distress.

Notice

Notice is hearby given that:

(1) The Coast Guard has granted the Town of Dartmouth, Massachusetts, a temporary deviation from the operating requirements listed at 33 CFR 117.587 paragraph (b)(1) governing the Padanaram Bridge over the Apponagansett River.

(2) This deviation from normal operating regulations is authorized in accordance with the provisions of 33 CFR 117.43 for the purpose of evaluating possible changes to the permanent regulations. Under this temporary deviation, the Padanaram Bridge operated by the Town of Dartmouth shall open on signal from July 1, 1993 through August 29, 1993 from 5 a.m. to 9 p.m. daily, only on the hour.

(3) The period of deviation is effective July 1, 1993 to August 29, 1993.

Dated: June 22, 1993.

Kent H. Williams,

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

[FR Doc. 93–16703 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD7 92–41]

RIN 2115–AE42

Regulated Navigation Area: Kings Bay, GA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a restricted navigation area to minimize the effect of passing vessels, wakes on U.S. Navy ships moored at the King's Bay Naval Submarine Base Magnetic Silencing Facility, Floating Dry Dock and Tender Refit Moors. At the U.S. Navy's request, the Coast Guard established a regulated navigation area in 1984 to minimize the effects of wakes on the drydock ARDM 1 OAKRIDGE. Since then, the construction of the Magnetic Silencing Facility and the related activities associated with it have increased the size of the regulated navigation area which is necessary to protect workers. The rule extends by approximately 700 yards the southern boundary of the bare steerageway regulated navigation area in the vicinity of the entrance to King's Bay, Georgia.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Lieutenant E. Gray, Seventh Coast Guard District, Aids to Navigation Branch, (305) 536–5621.

SUPPLEMENTARY INFORMATION: On July 16, 1992, the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (57 FR 31472). Interested persons were requested to submit comments, and no comments were received.

Drafting Information

The drafters of this regulation are Lieutenant E. Gray, project Officer, Seventh Coast Guard District, Aids to Navigation Branch, and Lieutenant

J. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received regarding this regulation.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The extension of the existing bare-steerageway zone by an additional 700 yards, as proposed by this regulation, will have little economic impact other than lengthening vessel transit time through the area by a short period.

Since the impact of this final rule is minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rulemaking and concluded that under section 2.b.2.1. of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation as an administrative action under the Coast Guard's statutory authority to establish and regulate Restricted Navigational Areas. This action clearly has no environmental impact. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is revised as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.730 is revised to read as follows:

§ 165.730 King's Bay, Georgia—Regulated navigation area.

Vessels transiting in the water bounded by the line connecting the following points must travel no faster than needed for steerageway:

Latitude	*Longtitude*
30°48'00.0" N	081°29'24.0" W
30°46'19.5" N	081°29'17.0" W
30°47'35.0" N	081°30'16.5" W

and thence to the point of beginning

Dated: July 9, 1993.

William P. Leahy,

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

[FR Doc. 93–16712 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AF52

Veterans Education; Disenrollment From the Post-Vietnam Era Veterans' Educational Assistance Program Following Election To Receive Other Benefits

AGENCY: Department of Defense and Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs Nurse Pay Act of 1990 requires VA (Department of Veterans Affairs) to make payments to certain military officers and former officers who were commissioned in 1977 and 1978. The law provides that if any of these officers or former officers participated in VEAP (Post-Vietnam Era Veterans' Educational Assistance Program), they must disenroll from that program before receiving those benefits. The National Defense Authorization Act for Fiscal Year 1991 provides additional ways in which an individual may become eligible for the Montgomery GI Bill—Active Duty. One of these permits certain involuntarily separated veterans who ordinarily would be eligible for benefits under the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP) to elect to receive benefits under the Montgomery GI Bill—Active Duty instead. These regulations will acquaint the public with the way in which VA will administer these provisions of law.

EFFECTIVE DATE: The amendment to § 21.5058, like the provision of law it implements, is retroactively effective on November 5, 1990. The amendment to § 21.5064, like the provision of law it implements, is retroactively effective on August 15, 1990.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 41451 and 41452 of the **Federal Register** of September 10, 1992, there was published a Notice of Intent to amend 38 CFR part 21 in order to implement provisions of Public Law 101–366, and Public Law 101–510 which deal with people with potential eligibility for VEAP who elect to receive either the officer adjustment benefit or the Montgomery GI Bill—Active Duty. Interested people were given 33 days to submit comments, suggestions or objections. VA and the Department of Defense received no comments, suggestions or objections. Accordingly, the departments are making the proposed amended regulations final.

Section 207 of the Department of Veterans Affairs Nurse Pay Act of 1990 (Pub. L. 101–366) provides that VA make a benefit payment to certain officers and former officers who elect by January 1, 1992, to receive payments. This officer adjustment benefit is to be the equivalent of what they would have received under the Vietnam Era GI Bill had they been eligible for benefits under that program minus what they received under VEAP. The law provides that VEAP participants must disenroll from VEAP in order to get this benefit.

Section 561 of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101–510) contains provisions that will enable additional individuals to become eligible for the Montgomery GI Bill—Active Duty. Under these provisions some involuntarily discharged veterans may elect to receive benefits under the Montgomery GI Bill—Active Duty rather than VEAP. Such an election is irrevocable. Even if a veteran should subsequently return to active duty, he or she could not reenroll in VEAP. The amendments to these regulations are designed to implement these sections of these acts.

Although these amended regulations generally follow the statutes which they are designed to implement, the statutes do give the implementing departments some freedom in some places. The factors considered in determining the policies contained in the amended regulations were discussed in the Federal Register of September 10, 1992.

The Department of Veterans Affairs and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA and Department of Defense find that good cause exists for making the amendment to § 21.5058 dealing with those who are involuntarily separated, like the provision of law it implements, retroactively effective on November 5, 1990. VA and Department of Defense find that good cause exists for making the amendment to § 21.5058 as well as all other regulations dealing with the officer adjustment benefit, like the provision of law it implements, retroactively effective on August 15, 1990. These regulations are intended to achieve a benefit for individuals. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of the provision of law, and might result in the denial of a benefit to someone who is entitled to it.

The Catalog of Federal Domestic Assistance number of the program affected by this proposal is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 5, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

Approved: June 16, 1993.

Nicolai Timenes, Jr.,

Principal Director (Military Manpower & Personnel Policy), Department of Defense.

For the reasons set out in the preamble, 38 CFR part 21, subpart G is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

1. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In § 21.5058, paragraph (b) and its authority citation are revised to read as follows:

§ 21.5058 Resumption of participation.

* * * * *

(b) A person who has disenrolled in order to receive educational assistance allowance under 38 U.S.C., chapter 34 may not disenrolled if he or she has negotiated a check under that chapter for pursuit of a program of education. A person who has disenrolled in order to receive an officer adjustment benefit payable under § 21.4703 of this part may not reenroll if he or she has negotiated a check representing benefits payable under that section. A person who has disemrolled in order to receive educational assistance under the Montgomery GI Bill—Active Duty, as provided in § 21.7045(b), may not reenroll. Any other person who has disenrolled may reenroll, but will have to qualify again for minimum participation as described in § 21.5052(a).

(Authority: 38 U.S.C. 3008A, 3202(1), 3222, Pub. L. 101–366, sec. 207; Pub. L. 98–223, Pub. L. 101–510) (Aug. 5, 1990) (Nov. 5, 1990)

3. In § 21.5064, paragraphs (b)(1) and (b)(2)(i) and the authority citation for paragraph (b)(2) are revised and an authority citation is added for paragraph (b)(1) to read as follows:

§ 21.5064 Refund upon disenrollment.

* * * * *

(b) * * *

(1) If a individual voluntarily disenrolls from the program before discharge or release from active duty, the time limit for providing the serviceperson with a refund will be determined as follows.

(i) If a serviceperson decides to disenroll in order to receive an officer adjustment benefit payable under § 21.4703, VA will refund the unused contributions not later than 60 days after receiving the serviceperson's valid election for the benefit.

(ii) In other cases VA will refund the money on—

(A) The date of the participant's discharge or release from active duty; or

(B) Within 60 days of the receipt of notice by VA of the individual's discharge or disenrollment; or

(C) Any earlier date in an instance of hardship or for other good reasons.

(Authority: 38 U.S.C. 3223, 3232, Pub. L. 101–366, sec. 207) (Aug. 15, 1990)

(2) * * *

(i) If a veteran disenrolls by electing to receive an officer adjustment benefit payable under § 21.4703 rather than receiving educational assistance under 38 U.S.C., chapter 32, VA shall refund his or her contributions not later than 60 days after receiving a valid election for the officer adjustment benefit.

* * * * *

(Authority: 38 U.S.C. 3202, 3223, 3232, Pub. L. 101–366, sec. 207)

* * * * *

[FR Doc. 93–16728 Filed 7–14–93; 8:45 am]

BILLING CODE 8320–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–6–1–5632; FRL–4675–1]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Revision to the State Implementation Plan; Correcting Sulfur Dioxide Enforceability Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This action approves a revision to the Louisiana State Implementation Plan (SIP) to include revisions to Louisiana Administrative Code (LAC), Title 33, Part III, Chapter 15, entitled Emission Standards for Sulfur Dioxide. These revisions correct

enforceability deficiencies and strengthen the provisions of Chapter 15.

EFFECTIVE DATE: This action will become effective on September 13, 1993 unless notice is received by August 16, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Mr. Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet, Baton Rouge, Louisiana 70884.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T–AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 655–7258.

SUPPLEMENTARY INFORMATION: A nationwide effort is being undertaken to have sulfur dioxide (SO_2) enforceability deficiencies identified and corrected in SIPs before operating permit programs become effective. Because the operating permit programs will initially codify underlying SIP requirements, it is important that the underlying SIP is enforceable so that permits themselves will be enforceable. EPA, Region 6, provided a list of deficiencies in Chapter 15 to the State of Louisiana by cover letter dated March 13, 1991. The Region used the "SO_2 SIP Enforceability Checklist" when reviewing Chapter 15 for enforceability deficiencies. This checklist, developed by the EPA, was included as an attachment to the November 28, 1990, memorandum from Robert Bauman and Rich Biondi to the Air Branch Chiefs. This memorandum, as well as the EPA, Region 6, March 13, 1991, letter are included as attachments to the Technical Support Document. The checklist focused on the following topics: (1) Clarity; (2) averaging times consistent with protection of the SO_2 National Ambient Air Quality Standards (NAAQS); (3) clear compliance determinations; (4) continuous emissions monitoring; (5) adequate reporting and recordkeeping requirements; (6) Director's discretion issues; and (7) Stack Height issues.

The State of Louisiana filed revisions to Chapter 15 in the Louisiana Register on April 20, 1992, in order to correct enforceability deficiencies. The revisions, discussed in detail in the Technical Support Document, are briefly outlined below.

Analysis of State Submission

1. Procedural Background

The Clean Air Act (Act) requires States to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 56 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

The State of Louisiana held a public hearing on February 27, 1992, to entertain public comment on proposed revisions to Chapter 15 addressing enforceability corrections. Public comments were received and adequately addressed by the State. Following the public hearing and consideration of public comments, the SIP revision was adopted by the State and filed in the Louisiana Register on April 20, 1992. The SIP revision was submitted by the Governor to the EPA by cover letter dated August 5, 1992.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991). A letter dated September 29, 1992, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. As noted in this action, the EPA is approving this Louisiana SIP submittal to correct SO_2 enforceability deficiencies.

2. Review of Revisions to Chapter 15

The State of Louisiana revised Chapter 15 in order to correct SO_2 enforceability deficiencies. These revisions supersede the latest version of Chapter 15 which was adopted by the Louisiana Department of Environmental Quality on December 20, 1987. Please reference 54 FR 9783 (March 8, 1989). For a detailed explanation of each change to Chapter 15 being approved today, please refer to the Technical Support Document. A brief summary of the revisions is presented in the following paragraph.

The revisions to Chapter 15 strengthen the provisions. Language has been added to Chapter 15 to protect the three-hour SO_2 NAAQS, and to clearly distinguish between certain new and existing sources. Compliance determination methods were clarified, including the involvement of the EPA in the approval of equivalent test methods. Language was also added to Chapter 15 to include the EPA in the review and approval of any variances or exceptions to certain Chapter 15 provisions. Continuous emissions monitoring provisions (including performance specifications, quality assurance procedures and 40 CFR part 51, appendix P requirements), and recordkeeping and reporting requirements were also added to the regulation.

Final Action

The EPA is approving a revision to the Louisiana SIP to include revisions to LAC, Title 33, Part III, Chapter 15, entitled Emission Standards for Sulfur Dioxide. These revisions correct enforceability deficiencies and strengthen the provisions of Chapter 15. The revisions were filed in the Louisiana Register on April 20, 1992, and were submitted by the Governor to the EPA by cover letter dated August 5, 1992.

The EPA has reviewed these revisions to the Louisiana SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 13, 1993 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent

notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 13, 1993.

The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economical, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 13, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order 12291

This action has been classified as a table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The EPA has submitted a request for a permanent waiver for table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Note: Incorporation by reference of the SIP for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 25, 1993.

Joe D. Winkle,

Acting Regional Administrator (6A).

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The Authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(59) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(59) A revision to the Louisiana State Implementation Plan (SIP) to include revisions to LAC, Title 33, "Environmental Quality," Part III. Air, Chapter 15. Emission Standards for Sulfur Dioxide, effective April 20, 1992, and submitted by the Governor by cover letter dated August 5, 1992.

(i) Incorporation by reference.

(A) Revisions to LAC, Title 33, "Environmental Quality," Part III. Air, Chapter 15. Emission Standards for Sulfur Dioxide, Section 1501, "Degradation of Existing Emission Quality Restricted;" Section 1503, "Emission Limitations;" Table 4, "Emissions—Methods of Contaminant Measurement;" Section 1505, "Variances;" Section 1507, "Exceptions;" Section 1509, "Reduced Sulfur Compounds (New and Existing Sources);" Section 1511, "Continuous Emissions Monitoring;" and Section 1513, "Recordkeeping and Reporting," effective April 20, 1992.

[FR Doc. 93–16364 Filed 7–14–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[OK–10–1–5798; FRL–4676–8]

Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Revision to the State Implementation Plan; Correcting Sulfur Dioxide Enforceability Deficiencies

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves a revision to the Oklahoma State Implementation Plan (SIP) to include revisions to Oklahoma Title 310, Chapter 200, Subchapter 31, entitled Control of Emissions of Sulfur Compounds. These revisions correct enforceability deficiencies and strengthen the provisions of Subchapter 31.

EFFECTIVE DATE: This action will become effective on September 13, 1993 unless notice is received by August 16, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Mr. Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Oklahoma Air Quality Service, 1000 NE., 10th, Oklahoma City, Oklahoma 73117.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T–AP), Air Programs Branch, U.S. Environmental Protection Agency (EPA) Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 655–7258.

SUPPLEMENTARY INFORMATION: A nationwide effort is being undertaken to have sulfur dioxide (SO_2) enforceability deficiencies identified and corrected in SIPs before operating permit programs become effective. Because the operating permit programs will initially codify underlying SIP requirements, it is important that the underlying SIP is enforceable so that permits themselves will be enforceable. The EPA Region 6 provided a list of deficiencies in Subchapter 31 (formerly Regulation 3.4) to the State of Oklahoma by cover letter dated March 13, 1991. The Region used the "SO_2 SIP Enforceability Checklist" when reviewing Subchapter 31 for enforceability deficiencies. This checklist, developed by the EPA, was included as an attachment to the November 28, 1990, memorandum from Robert Bauman and Rich Biondi to the Air Branch Chiefs. This memorandum, as well as the EPA Region 6 March 13, 1991, letter is included as attachments to the Technical Support Document. The checklist focused on the following topics: (1) Clarity; (2) averaging times consistent with protection of the SO_2 National Ambient Air Quality Standards; (3) clear compliance determinations; (4) continuous emissions monitoring; (5) adequate reporting and recordkeeping requirements; (6) Director's discretion issues; and (7) Stack Height issues.

The State of Oklahoma filed revisions to Subchapter 31 in the Oklahoma Register on April 9, 1993, in order to correct enforceability deficiencies. The revisions, discussed in detail in the Technical Support Document, are briefly outlined below.

Analysis of State Submission

1. Procedural Background

The Clean Air Act (CAA) requires States to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. See also section 110(l) of the CAA. Also, the EPA must determine whether a submittal is complete, and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended at 56 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

After providing adequate notice, the State of Oklahoma held a public hearing on March 10, 1992, to entertain public comment on proposed revisions to Subchapter 31 addressing enforceability corrections. Public comments were received and adequately addressed by the State. Following the public hearing and consideration of public comments, the SIP revision was adopted by the State and filed in the Oklahoma Register on June 29, 1992, as an emergency rule. The emergency rule became a permanent rule effective June 1, 1993. The SIP revision was submitted by the Governor to the EPA by cover letter dated December 10, 1992.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. A letter dated February 12, 1993, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. As noted in this action, the EPA is approving this Oklahoma SIP submittal to correct SO_2 enforceability deficiencies. The EPA is also approving this Oklahoma SIP submittal as a recodification of former Regulation 3.4.

2. Review of Revisions to Subchapter 31

The State of Oklahoma revised Subchapter 31 in order to correct SO_2 enforceability deficiencies. For a detailed explanation of each change to Subchapter 31 being approved in this action, please refer to the Technical Support Document. A brief summary of the revisions is presented in the following paragraph.

The revisions to Subchapter 31 strengthen the provisions. Continuous emissions monitoring provisions (including 40 CFR part 51, appendix P requirements, and 40 CFR part 60, appendix B requirements), and recordkeeping and reporting requirements were added to the regulation for certain sulfuric acid plants, fuel-burning equipment, nonferrous smelters and paper pulp mills. In addition, ambient air standards, compliance test provisions (the EPA approved test procedures and the EPA approved dispersion models) and compliance dates were clarified, and clear definitions were added regarding total reduced sulfur operations.

Final Action

The EPA is approving a revision to the Oklahoma SIP to include revisions to Oklahoma Title 310, Chapter 200, Subchapter 31, entitled Control of Emission of Sulfur Compounds. These revisions correct enforceability deficiencies and strengthen the provisions of Subchapter 31. The revisions were submitted by the Governor to the EPA by cover letter dated December 10, 1992.

The EPA has reviewed these revisions to the Oklahoma SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective September 13, 1993 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action, and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective September 13, 1993.

The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economical, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government

entities with jurisdiction over populations of less than 50,000

The SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co* v. *U.S EPA*, 427 U.S. 246 256–66 (S Ct 1976), 42 U S C. 7410(a)(2)

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 13 1993 Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule or action This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order 12291

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19 1989 (54 FR 2214–2225) On January 6 1989 the Office of Management and Budget (OMB) waived Tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years The EPA has submitted a request for a permanent waiver for table 2 and 3 SIP revisions The OMB has agreed to continue the temporary waiver until such time as it rules on the EPA s request

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference Reporting and recordkeeping requirements, Sulfur dioxide

Note: Incorporation by reference of the SIP for the State of Oklahoma was approved by the Director of the Federal Register on July 1 1982

Dated: June 30, 1993.

Joe D. Winkle,

Acting Regional Administrator (6A).

40 CFR part 52 is amended as follows

PART 52—[AMENDED]

1 The authority citation for part 52 continues to read as follows.

Authority: 42 U S.C. 7401–7671q.

Subpart LL—Oklahoma

2 Section 52.1920 is amended by adding paragraph (c)(43) to read as follows:

§ 52.1920 Identification of Plan.

* * * * *

(c) * * *

(43) A revision to the Oklahoma SIP to include revisions to Oklahoma Title 310 Chapter 200 Subchapter 31, entitled Control of Emissions of Sulfur Compounds.

(i) Incorporation by reference.

(A) Revisions to Oklahoma Title 310 Chapter 200, Subchapter 31 entitled Control of Emissions of Sulfur Compounds, Part 1 "General Provisions," Section 310:200–31–2, "Definitions," Section 310:200–31–3 "Performance testing," Part 3 "Existing Equipment Standards," Section 310:200–31–12, "Sulfur oxides," Section 310:200–31–13 "Sulfuric acid mist;" Section 310:200–31–14, "Hydrogen sulfide," Section 310:200–31–15 "Total reduced sulfur;" Part 5 "New Equipment Standards," Section 310.200–31–25 "Sulfur oxides," and Section 310.200–31–26 "Hydrogen sulfide," as adopted by the Oklahoma State Board of Health on March 24, 1993 and effective June 1, 1993

[FR Doc. 93–16365 Filed 7 14–93 8.45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OCC–015–FC]

Medicare Program, Health Maintenance Organizations: Technical Amendments

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

ACTION: Final rule with comment period

SUMMARY: This rule amends the HCFA regulations that pertain to prepaid health care to provide for uniform use of certain terms throughout part 417, simplify, clarify, and update content that pertains to the furnishing of health care services by, and the organization and operation of, Federally qualified health maintenance organizations (HMOs); and redesignate certain sections, correct internal crossreferences, and make minor conforming changes to ensure internal consistency.

These are technical and editorial changes intended not to change the substance of the rules but rather to make it easier to find particular content and to better ensure uniform understanding of the regulations.

The purpose of redesignations is to free section numbers in areas where it is necessary to insert new provisions (in logical order) to reflect changes in the Public Health Service Act.

DATES: Effective Date: These regulations are effective on July 15 1993

Comment Date Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p m on September 13 1993

ADDRESSES: Mail written comments (four copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention OCC–015–FC, P O Box 26676 Baltimore, MD 21207

If you prefer, you may deliver your comments to one of the following addresses.

Room 309–G Hubert H Humphrey Building, 200 Independence Avenue, SW , Washington, DC, or

Room 132 East High Rise Building, 6325 Security Boulevard, Baltimore Maryland

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission In commenting, please refer to file code OCC–015–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department s offices at 200 Independence Avenue SW , Washington DC, on Monday through Friday of each week from 8:30 a.m to 5 p.m (phone: (202) 690–7890)

FOR FURTHER INFORMATION CONTACT: Maureen Miller, (202) 619–0129

SUPPLEMENTARY INFORMATION:

A. Background

The regulations in part 417, which pertain to health maintenance organizations (HMOs), competitive medical plans (CMPs) and health care prepayment plans (HCPPs) are based

partly on the Social Security Act (the Act) and partly on the Public Health Service Act (the PHS Act). They have not been revised to reflect certain changes made in those statutes since the rules were published.

The technical and editorial changes made by this rule are part of a project to simplify, clarify, and update the whole of part 417. The first step in that project was a final rule identified as OCC–022–F, and published in the **Federal Register** on October 17, 1991, at 56 FR 51984.

OCC–022–F—

- Removed outdated content;
- Redesignated certain portions of part 417 to free section numbers needed so that new rules can be incorporated in logical order; and
- Designated the remaining text under new subpart headings to make it easier to refer to particular program aspects. Subpart and section references in this rule are based on the changes made by OCC–022–F.

B. Scope of This Rule

This rule—

- Through nomenclature and definition changes, establishes certain terms to be used uniformly throughout part 417 with the aim of precluding confusion, making clear that responsibility for the prepaid health care programs has been delegated to HCFA, and ensuring use of the most precise terms available.
- Amends § 417.106 to transfer from other sections content that is pertinent to the furnishing of services rather than to the administrative aspects of HMO functions, and to provide descriptive headings for paragraphs and paragraph subdivisions, to serve as signposts for the reader.
- Redesignates the content of § 417.107 as §§ 417.120, 417.122, 417.124, and 417.126 under a new Subpart C—Qualified Health Maintenance Organizations: Organization and Operation.
- Redesignates §§ 417.108 and 417.109 as §§ 417.168 and 417.169, under subpart F, which pertains to the continued regulation of federally qualified HMOs. As a result of these redesignations and others made by OCC–022–F, §§ 417.107 through 417.119 are freed for new rules required by changes in the statutes that govern prepaid health care services or may be required by future changes in those statutes.

This rule also corrects internal cross-references as required by the redesignation of §§ 417.110–417.137 as §§ 417.910–417.937, accomplished by OCC–022–F, of October 17, 1991.

C. Clarification and Updating

On the basis of past experience, we have determined that it is easier to find particular rules or provisions and to understand the regulations if we—

1. Use more sections so that each section deals with a particular subject or program aspect than can be adequately identified by a heading listed in the table of contents.
2. Break down long columns of text to—
   a. List and designate (with numbers or letters) the several conditions or requirements; and
   b. Use more paragraphs and subdivisions of paragraphs with headings.
3. Follow logical organization.
4. Are precise in our use of language, for example, define frequently used terms and never use different words to mean the same thing or the same word to mean different things.
5. Use the active voice and always specify who does what.
6. Limit the number of designation levels within each section. Two levels—(a)(1)—is ideal; four levels—(a)(1)(i)(A)—is the acceptable maximum. The greater the number of designation levels, the harder it is (in the unindented format of the **Federal Register** text) to determine which portions are subordinate to which other portions of the rules. The italicized (1) and (i) (which represent levels (5) and (6)) are almost impossible to distinguish from the nonitalicized (1) and (i) that identify levels 2 and 3.

The changes needed to update the rules include—

1. The removal of outdated content and terms.
2. Correction of references to—
   a. Sections of the law that have been repealed and sections of the rules that have been moved or redesignated;
   b. Organizations that have changed their names; and
   c. Sources of information or benefits that have changed their addresses.
3. Using the terms that are currently used in HCFA regulations, such as "must" rather than "shall"; "HCFA" rather than "the Secretary" for authorities and responsibilities that have been delegated; and "that" rather than "which" when the term is used to limit or define.

D. Provisions of the Regulation

1. Redesignation of § 417.107

This rule redesignates the content of § 417.107 under four sections as shown in the following table:

§ 417.120 Fiscally sound operation and assumption of financial risk.
§ 417.122 Protection of enrollees.
§ 417.124 Administration and management.
§ 417.126 Recordkeeping and reporting requirements.

In redesignated § 417.124, we have made three changes that require explanation.

a. We have revised paragraph (e) to make clear that all HMOs (including those that do not ordinarily offer individual enrollment) must offer individual enrollment to any enrollee who—

- Leaves an enrolled group; or
- Ceases being eligible for enrollment as a dependent because of his or her age or the death or divorce of the subscriber.

This clarification is for the benefit of HMOs which interpreted that the provision does not apply to them because they do not ordinarily offer individual enrollment. The revised language is consistent with the preamble discussion of the original provision, which was then designated as paragraph (g) of § 110.108 of the PHS regulations (before transfer of the HMO rules to the HCFA regulations by a final rule published on September 7, 1987, at 52 FR 36746).

Section 110.108(g) was first proposed in an NPRM published on September 11, 1978, at 43 FR 40383. The final rule was published on July 18, 1979, at 44 FR 42069. The preamble to the final rule does not indicate that there were any comments on the provision. However, item 29 (page 42063) stated:

> "29. The language of § 110.108(g), which refers to the conversion of membership, is retained. The Secretary notes that, even if the HMO as a general practice does not offer individual membership, it must arrange for a member of a group who so chooses, to remain as an HMO member when leaving the group. However, an HMO is allowed to establish a rate differential for individual members under its community rating system."

b. We have removed the content of paragraph (f) because the requirement that at least one third of the members of the policymaking body of a private HMO or the advisory board of a public HMO be enrollees, previously contained in section 1301(c)(5) of the PHS Act, was repealed by section 5(b) of the HMO Amendments of 1988 (Pub. L. 100–517).

c. Section 417.124(h), Certification of institutional providers, differs from the previous § 417.107(i) that it redesignates and revises. The revised section specifies the four kinds of certificates that HCFA may issue under recently revised regulations that govern licensing of laboratories.[1] Laboratories were required to register under the Clinical

[1] A fifth type of certificate, for physicians who do microscopy tests, will be added when it is established by final rule.

Laboratory Improvement Amendments Act (CLIA) by September 1, 1992. Although HCFA continues to pay Medicare claims, any such payments to unregistered laboratories may be subject to recoupment. Laboratories that file claims after September 1 1992, are being notified of the need to register if they have not already done so.

In redesignated § 417.126(b), we have changed from 180 days to 120 days (after the end of the fiscal year) the period during which an HMO must submit certain reports. This change conforms the rule to administrative practice that has been in effect for several years. Under the Health Maintenance Organization National Data Reporting Requirements (NDRR) (Form HCFA–906), annual reports must be submitted within 120 days of the end of the fiscal year. This requirement has been in effect since 1986 (the effective date of the current form), without objection by the HMOs subject to the deadline

2. Revision of § 417 436 Rules for Enrollees

This rule revises § 417 436 to restore content that was unintentionally removed by a final rule identified as BPD–718–IFC, and published in the **Federal Register** on March 6, 1992, at 57 FR 8194

3 General Approach in Presenting the Rules

Each of the sections that required changes is presented in one of the three portions of the rules text, so that readers and users can, by looking in one place, determine all the changes made in a particular section. The first portion of the rules (referred to as the "Body") presents those sections of part 417 that could be updated and clarified only through changes that go beyond correction of cross-references and changes in terminology. The second portion of the rules (identified as "Technical Amendments") presents the changes made in those sections that required technical and editorial changes in addition to the basic nomenclature changes. The final portion specifies the nomenclature changes for those sections that are not included in the "Body" or under "Technical Amendments".

This final portion gives specific locations for nomenclature changes except—

- Change from "Public Health Service Act" to "PHS Act"—which is made uniformly throughout part 417, and
- Change from "the Secretary" to "HCFA"—which is made uniformly throughout part 417, except in subpart V.

This exception means that a section that had only one or both of these nomenclature changes does not appear in the rules text However, for sections presented under "Technical Amendments", all nomenclature changes are also shown, and for sections included in the "Body", both technical amendments and nomenclature changes are shown.

For the convenience of the reader, the revised table of contents of part 417 is set forth below, with marginal notations to indicate in which portion of the rules each section is covered:

"Nomen"—indicates a section that required only nomenclature changes and is therefore covered in the final portion of the rules text.

"Tech."—indicates that the section required technical amendments as well as nomenclature changes and is presented in the middle portion of the rules.

"Body" identifies the section as one requiring changes that go beyond technical amendments and nomenclature changes and is therefore presented in the first portion of the rules.

"No change" refers to sections that are not covered at all in the rules, including sections that had only the nomenclature changes excepted above.

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

Subpart A—General Provisions

Sec.
Body 417.1 Definitions.
Nomen 417 2 Basis and scope.

Subpart B—Qualified Health Maintenance Organizations: Services

Tech. 417.101 Health benefits plan: Basic health services.
Nomen 417.102 Health benefits plan: Supplemental health services.
Nomen 417 103 Providers of basic and supplemental health services.
Nomen 417.104 Payment for basic health services.
Nomen 417.105 Payment for supplemental health services.
Body 417.106 Quality assurance program; availability, accessibility, and continuity of basic and supplemental health services.

Subpart C—Qualified Health Maintenance Organizations: Organization and Operation

Body 417.120 Fiscally sound operation and assumption of financial risk.
Body 417.122 Protection of enrollees.
Body 417.124 Administration and management.
Body 417.126 Recordkeeping and reporting requirements.

Subpart D—Application for Federal Qualification

Body 417 140 Applicability
Body 417.141 Definitions.
Body 417 142 Requirements for qualification.
Tech. 417 143 Application requirements.
Tech. 417.144 Evaluation and determination of qualification.

Subpart E—Inclusion of Qualified Health Maintenance Organizations in Employee Health Benefits Plans

Tech. 417 150 Definitions.
Tech. 417.151 Applicability
Tech. 417.152 Requirements for a request for inclusion of the HMO option in a health benefits plan; employing entity response.
Tech. 417.153 Offer of HMO option to employees.
Tech. 417 154 HMOs that must be included in a health benefits plan.
Tech. 417 155 How the HMO option is to be included in the health benefits plan.
Nomen 417.156 When the HMO is to be offered to employees.
Tech. 417.157 Contributions for HMO option.
Nomen 417 158 Payroll deductions.
Tech. 417.159 Relationship of section 1310 of the PHS Act to the National Labor Relations Act, and the Railway Labor Act.

Subpart F—Continued Health Maintenance

Body 417.160 Purpose and applicability
Body 417 161 Compliance with assurances.
Body 417 162 Reporting requirements.
Tech. 417.163 Enforcement procedures.
Tech. 417 164 Effect of revocation of qualification for purposes of section 1310 of the PHS Act.
Tech. 417.165 Reapplication for qualification.
Nomen 417 166 Waiver of assurances.
Body 417.168 Special requirements: Titles XVIII and XIX of the Social Security Act.
Body 417.169 Special requirements: Federal employee health benefits program.

Subpart G—[Reserved]

Subpart H—[Reserved]

Subpart I—[Reserved]

Subpart J—Qualifying Conditions for Medicare Contracts

Tech. 417 400 Basis and scope.
Body 417 401 Definitions.
Body 417 402 Effective date of initial regulations.
Tech. 417 404 Introduction.
Tech. 417 406 Application and determination.
Tech. 417 407 Definitions of HMO and CMP.
Tech. 417 408 Contract application process.
Tech. 417 410 Qualifying conditions: General.
Nomen 417 412 Qualifying condition: Administration and management.
Nomen 417 413 Qualifying condition: Operating experience and enrollment.

Tech. 417.414 Qualifying condition: Range of services.
Nomen 417.416 Qualifying condition: Furnishing of services.
Body 417.418 Qualifying condition: Quality assurance program.

Subpart K—Enrollment, Entitlement, and Disenrollment Under Medicare Contract

Tech. 417.420 Basic rules on enrollment and entitlement.
Tech. 417.422 Eligibility to enroll in an HMO or CMP.
Tech. 417.424 Denial of enrollment.
Tech. 417.426 Open enrollment requirements.
Nomen 417.428 Marketing activities.
Nomen 417.430 Application procedures.
Nomen 417.432 Conversion of enrollment.
Nomen 417.434 Reenrollment.
Body 417.436 Rules for enrollees.
Tech. 417.440 Entitlement to health care services from an HMO or CMP.
Nomen 417.442 Risk HMOs and CMPs: Conditions for provision of additional benefits.
Body 417.444 Special rules for certain enrollees of risk HMOs and CMPs.
Tech. 417.448 Restriction on payments for services received by Medicare enrollees of risk HMOs or CMPs.
Tech. 417.450 Effective date of coverage.
Tech. 417.452 Liability of Medicare enrollees.
Nomen 417.454 Charges to Medicare enrollees.
Tech. 417.456 Refunds to Medicare enrollees.
Nomen 417.458 Recoupment of uncollected deductible and coinsurance amounts.
Body 417.460 Disenrollment of beneficiaries and termination of payments to an HMO or CMP.

Subpart L—Medicare Contract Requirements

Tech. 417.470 Basis and scope.
Tech. 417.472 Basic contract requirements.
Nomen 417.474 Effective date and term of contract.
No change 417.476 Waived conditions.
Tech. 417.478 Requirements of other laws and regulations.
Nomen 417.480 Maintenance of records: Reasonable cost HMOs and CMPs.
Nomen 417.481 Maintenance of records: Risk HMOs and CMPs.
Nomen 417.482 Access to facilities and records.
Nomen 417.484 Requirement applicable to related entities.
Nomen 417.486 Disclosure of information and confidentiality.
Nomen 417.488 Written notice of termination.
Nomen 417.490 Renewal of contract.
Tech. 417.492 Nonrenewal of contract.
Tech. 417.494 Modification or termination of contract.

Subpart M—Change of Ownership and Leasing of Facilities: Effect on Medicare Contract

Tech. 417.520 General provisions.
Nomen 417.521 What constitutes change of ownership.
Tech. 417.522 Novation agreement requirements.
Tech. 417.523 Effect of leasing of an HMO's or CMP's facilities.

Subpart N—Medicare Payment to HMOs and CMPs: General Rules

Nomen 417.524 Payment to HMOs and CMPs: General.
Tech. 417.526 Payment for covered services.
Tech. 417.528 Payment for covered services: Medicare not primary payer.

Subpart O—Medicare Payment: Cost Basis

Tech. 417.530 Basis and scope.
Nomen 417.531 Hospice care services.
Nomen 417.532 General considerations.
Nomen 417.533 Part B carrier responsibilities.
Nomen 417.534 Allowable costs.
Tech. 417.536 Provider cost reimbursement principles applicable to HMOs and CMPs.
Nomen 417.538 Enrollment and marketing costs.
Nomen 417.540 Enrollment data costs.
No change 417.542 Reinsurance costs.
Nomen 417.544 Physicians' services furnished directly by the HMO or CMP.
Nomen 417.546 Physicians' services and other Part B supplier services furnished under arrangements.
Tech. 417.548 Provider services through arrangements.
Tech. 417.550 Special Medicare program requirements.
Nomen 417.552 Cost apportionment: General provisions.
Nomen 417.554 Apportionment: Provider services furnished directly by the HMO or CMP.
Nomen 417.556 Apportionment: Provider services furnished by the HMO or CMP through arrangements with others.
Nomen 417.558 Emergency and urgently needed services, and out-of-area services for which the HMO or CMP assumes financial responsibility: Sources of payment.
Nomen 417.560 Apportionment: Part B physician and supplier services.
Nomen 417.562 Weighting of direct services furnished by physicians and other practitioners.
Nomen 417.564 Apportionment and allocation of administrative and general costs.
Nomen 417.566 Other methods of allocation and apportionment.
Nomen 417.568 Adequate financial records, statistical data, and cost finding.
Nomen 417.570 Interim per capita payments.
Nomen 417.572 Budget and enrollment forecast and interim reports.
Nomen 417.574 Interim settlement.
Nomen 417.576 Final settlement.

Subpart P—Medicare Payment: Risk Basis

Tech. 417.580 Basis and scope.
Tech. 417.582 Definitions applicable to risk reimbursement.
Nomen 417.584 Payment to HMOs and CMPs with risk contracts.
Nomen 417.585 Exception for hospice care services.
Nomen 417.586 HMO or CMP option: Payment to hospitals and SNFs.
Nomen 417.588 Computation of adjusted average per capita cost (AAPCC).
Body 417.590 Computation of the average of the per capita rates of payment.
Tech. 417.592 Determination of required additional benefits.
Tech. 417.594 Computation of ACR.
Nomen 417.596 Establishment of a benefit stabilization fund.
Body 417.597 Withdrawal from a benefit stabilization fund.
Tech. 417.598 Annual enrollment reconciliation.

Subpart Q—Beneficiary Appeals

Tech. 417.600 Scope.
Tech. 417.602 Definitions applicable to beneficiary appeals.
Tech. 417.604 General provisions.
Body 417.606 Initial determinations.
Nomen 417.608 Notice of adverse initial determination.
Nomen 417.610 Parties to the initial determination.
No change 417.612 Effect of initial determination.
No change 417.614 Right to reconsideration.
Nomen 417.616 Request for reconsideration.
Nomen 417.618 Opportunity to submit evidence.
Nomen 417.620 Responsibility for reconsideration.
Nomen 417.622 Reconsidered determination.
No change 417.624 Notice of reconsidered determination.
No change 417.626 Effect of reconsidered determination.
No change 417.628 Hearings: General.
No change 417.630 Right to a hearing.
Nomen 417.632 Request for hearing.
Nomen 417.634 Appeals Council review.
Nomen 417.636 Court review.
Nomen 417.638 Reopening determinations and decisions.

Subpart R—Medicare Contract Appeals

Tech. 417.640 Determinations subject to appeal.
Tech. 417.642 Administrative actions that are not initial determinations.
Nomen 417.644 Notice of initial determination.
No change 417.646 Effect of initial determination.
No change 417.648 Right to request reconsideration.
No change 417.650 Request for reconsideration.
No change 417.652 Opportunity to submit evidence.
No change 417.654 Reconsidered determination.

Nomen 417.656 Notice of reconsidered determination.
No change 417.658 Effect of reconsidered determination.
Nomen 417.660 Right to a hearing.
Nomen 417.662 Request for hearing.
Nomen 417.664 Postponement of effective date of initial determination.
No change 417.666 Designation of hearing officer.
No change 417.668 Disqualification of hearing officer.
Tech. 417.670 Time and place of hearing.
Nomen 417.672 Appointment of representatives.
No change 417.674 Authority of representatives.
No change 417.676 Conduct of hearing.
No change 417.678 Evidence.
No change 417.680 Witnesses.
No change 417.682 Discovery.
No change 417.684 Prehearing.
No change 417.686 Record of hearing.
No change 417.688 Authority of hearing officer.
No change 417.690 Notice and effect of hearing decision.
No change 417.692 Reopening of initial or reconsidered determination or decision of a hearing officer.
No change 417.694 Effect of revised determination.

Subpart S—[Reserved]

Subpart T—[Reserved]

Subpart U—Health Care Prepayment Plans

Tech. 417.800 Reimbursement of health care prepayment plans; definitions and basic rule.
Tech. 417.801 Agreements between HCFA and health care prepayment plans.
Tech. 417.802 Allowable costs.
No change 417.804 Cost apportionment.
Tech. 417.806 Financial records, statistical data, and cost finding.
No change 417.808 Interim per capita payments.
Tech. 417.810 Final settlement.

Subpart V—Administration of Outstanding Loans and Loan Guarantees

Body 417.910 Scope and applicability.
Body 417.911 Definitions.
Tech. 417.912 Requirements for applications.
Tech. 417.913 Standards and procedures for review and comment by the appropriate health systems agency or State health planning and development agency.
No change 417.914 Additional conditions.
Nomen 417.915 Confidentiality requirements.
No change 417.916 Purposes for which grant funds may be used.
Tech. 417.917 Effect of a grantee's failure to become or to remain a qualified HMO.
Tech. 417.918 Obligation of the Federal Government to continue support for an approved project.
Nomen 417.919 Effect of a grantee's change from non-profit to for-profit status.
Body 417.920 Planning and initial development.
Tech. 417.921 Eligible applicants.
Tech. 417.922 Project elements for planning.
Tech. 417.923 Project elements for initial development.
Tech. 417.924 Funding duration and limitation.
Tech. 417.925 Evaluation and award: Planning and initial development.
Tech. 417.926 Loan guarantee provisions.
Body 417.930 Initial costs of operation.
Tech. 417.931 Definitions.
Tech. 417.932 Eligible applicants and projects: Initial costs of operation.
Tech. 417.933 Project elements for initial costs of operation.
Nomen 417.934 Reserve requirement.
Tech. 417.935 Evaluation and award: Initial costs of operation.
Tech. 417.936 Funding duration limitation.
Tech. 417.937 Loan provisions.

Waiver of Proposed Rulemaking

Most of the changes made by this rule are technical and editorial in nature, and aim to simplify, clarify, and update subparts B and C of part 417 of the HMO regulations, without substantive change. The removal of the requirement that ⅓ of the members of the policymaking or advisory body be HMO enrollees simply conforms to the statutory repeal of the requirement. The change in the deadline for submitting reports is substantive, but as noted above, all affected parties had notice of, and have acquiesced in, the 120-day deadline for at least 6 years.

Accordingly, we find that notice and opportunity for public comment are unnecessary and that there is good cause to waive proposed rulemaking procedures.

However, as previously indicated, we will consider timely comments from anyone who believes that, in making the technical and editorial changes, we have unintentionally altered the substance, or who objects to the change in the reporting deadline. Although we cannot respond to comments individually, if we change these rules as a result of comments, we will discuss all timely comments in the preamble to the revised rules.

Regulatory Impact Statement

Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any rule that will have an economic impact of $100 million or more, cause a major increase in costs or prices, or meet other thresholds specified in section 1(b) of the order.

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

Regulatory Flexibility Analysis

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

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

Paperwork Reduction Act

Sections 417.120, 417.122, 417.124, and 417.126 contain information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980. The reporting and recordkeeping requirements include such things as general reporting and disclosure requirements, financial and marketing plans, and reporting under specified statutes. These requirements, which have been in effect for several years, currently are approved under OMB number 0938–0472.

We estimate that the financial plan requirement involves about 200 respondents and each requires about 8 hours to develop the plan. For "full and fair disclosure", which relates to marketing, all Federally qualified HMOs (about 350) are involved, and the time required is also 8 hours per respondent. General reporting and disclosure is required of all 350 HMOs, but can be accomplished in about 6 hours. Reporting under ERISA also involves all HMOs but requires only about 1 hour per respondent. For reports on significant business transactions, we estimate that there will be only 50 respondents who can prepare their reports in 1 hour.

If you comment on these information collection requirements, please send a copy of your comments directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, room 3001, New Executive Office Bldg., Washington, DC 20503, Attention: Allison Herron Eydt, Desk Officer for HCFA.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Health maintenance organizations (HMO), Medicare.

Derivation Table for 42 CFR Part 417, Subparts B and C

New section	Old section
Subpart B	
417.106(a)	417.107(h)
417.106(c)(3)	417.107(l)
417.106(d)	417.107(k)
Subpart C	
417.120	417.107 (a)(1) (i)–(iii), (v) & (vi) and (b)
417.122	417.107 (a)(1)(iv) and (a)(3)
417.124	417.107 (a)(2), (c)–(e), and (g)–(i)
417.126	417.107(j)–(m)

42 CFR part 417 is amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

A. The authority citation for part 417 is revised to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 13951(a)(1)(A), 1395x(s)(2)(H), 1395hh, 1395kk, and 1395mm); section 114(c) of Public Law 97–248 (42 U.S.C. 1395mm note); secs. 1301 through 1318 of the Public Health Service Act (42 U.S.C. 300e through 300e–17) unless otherwise noted.

B. Subpart A is amended as follows:

Subpart A—General Provisions

1. Section 417.1 is amended to revise the introductory text; remove the definitions of *HCFA* and *Member;* insert, in alphabetical order, a definition of *Enrollee;* and revise the definitions of *Community rating system, Health maintenance organization, Individual practice association, Medical group, Medically underserved population, Policymaking body, Qualified HMO, Service area, Staff of the HMO, Subscriber,* and *Unusual or infrequently used health services* to read as follows:

§ 417.1 Definitions.

As used in this part, unless the context indicates otherwise—

* * * * *

Community rating system means a system of fixing rates of payments for health services that meets the requirements of § 417.104(a)(3).

* * * * *

Enrollee means an individual for whom an HMO, CMP, or HCPP assumes the responsibility, under a contract or agreement, for the furnishing of health care services on a prepaid basis.

* * * * *

Health maintenance organization (HMO) means a legal entity that provides or arranges for the provision of basic and supplemental health services to its enrollees in the manner prescribed by, is organized and operated in the manner prescribed by, and otherwise meets the requirements of, section 1301 of the PHS Act and the regulations in subparts B and C of this part, and §§ 417.168 and 417.169.

* * * * *

Individual practice association (IPA) means a partnership, association, corporation, or other legal entity that delivers or arranges for the delivery of health services and which has entered into written services arrangement or arrangements with health professionals, a majority of whom are licensed to practice medicine or osteopathy. The written services arrangement must provide:

(1) That these health professionals will provide their professional services in accordance with a compensation arrangement established by the entity; and

(2) To the extent feasible, for the sharing by these health professionals of health (including medical) and other records, equipment, and professional, technical, and administrative staff.

Medical group means a partnership, association, corporation, or other group:

(1) That is composed of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals (including dentists, optometrists, and podiatrists) as are necessary for the provision of health services for which the group is responsible;

(2) A majority of the members of which are licensed to practice medicine or osteopathy; and

(3) The members of which:

(i) After the end of the 48 month period beginning after the month in which the HMO for which the group provides health services becomes a qualified HMO, as their principal professional activity (over 50 percent individually) engage in the coordinated practice of their profession and as a group responsibility have substantial responsibility (over 35 percent in the aggregate of their professional activity) for the delivery of health services to enrollees of an HMO;

(ii) Pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account or other similar plan unrelated to the provision of specific health services;

(iii) Share health (including medical) records and substantial portions of major equipment and of professional, technical, and administrative staff;

(iv) Establish an arrangement whereby an enrollee's enrollment status is not known to the health professional who provides health services to the enrollee.

* * * * *

Medically underserved population means the population of an urban or rural area as described in Sec. 417.912(d).

* * * * *

Policymaking body of an HMO means a board of directors, governing body, or other body of individuals that has the authority to establish policy for the HMO.

Qualified HMO means an HMO found by HCFA to be qualified within the meaning of section 1310 of the PHS Act and subpart D of this part.

* * * * *

Service area means the geographic area as defined through zip codes, census tracts, or other geographic subdivisions, found by HCFA to be the area within which the HMO provides or arranges for basic and supplemental health services that are available and accessible to its enrollees as required by section 1301(b)(4) of the PHS Act.

* * * * *

Staff of the HMO means health professionals who are employees of the HMO and who—

(1) Provide services to HMO enrollees at an HMO facility subject to the staff policies and operational procedures of the HMO;

(2) Engage in the coordinated practice of their profession and provide to enrollees of the HMO the health services that the HMO has contracted to provide;

(3) Share medical and other records, equipment, and professional, technical, and administrative staff of the HMO; and

(4) Provide their professional services in accordance with a compensation arrangement, other than fee-for-service, established by the HMO. This arrangement may include, but is not limited to, fee-for-time, retainer or salary.

Subscriber means an enrollee who has entered into a contractual relationship with the HMO or who is responsible for making payments for basic health services (and contracted for supplemental health services) to the HMO or on whose behalf these payments are made.

* * * * *

Unusual or infrequently used health services means:

(1) Those health services that are projected to involve fewer than 1 percent of the encounters per year for the entire HMO enrollment, or,

(2) Those health services the provision of which, given the enrollment projection of the HMO and generally accepted staffing patterns, is projected will require less than 0.25 full time equivalent health professionals.

C. Subpart B is amended as follows:

1. The heading of subpart B is revised to read as follows:

Subpart B—Qualified Health Maintenance Organizations: Services

2. Section 417.106 is revised to read as follows:

§ 417.106 Quality assurance program; Availability, accessibility, and continuity of basic and supplemental health services.

(a) *Quality assurance program.* Each HMO or CMP must have an ongoing quality assurance program for its health services that meets the following conditions:

(1) Stresses health outcomes to the extent consistent with the state of the art.

(2) Provides review by physicians and other health professionals of the process followed in the provision of health services.

(3) Uses systematic data collection of performance and patient results, provides interpretation of these data to its practitioners, and institutes needed change.

(4) Includes written procedures for taking appropriate remedial action whenever, as determined under the quality assurance program, inappropriate or substandard services have been provided or services that ought to have been furnished have not been provided.

(b) *Availability and accessibility of health care services.* Basic health services and those supplemental health services for which enrollees have contracted must be provided or arranged for by the HMO in accordance with the following rules:

(1) Except as provided in paragraph (b)(2) of this section, the services must be available to each enrollee within the HMO's service area.

(2) *Exception.* If the HMO's service area is located wholly within a nonmetropolitan area, the HMO may make available outside its service area any basic health service that is not a primary care or emergency care service, if the number of providers of that basic health service who will provide the service to the HMO's enrollees is insufficient to meet the demand. As used in this paragraph, primary care includes general practice, family practice, general internal medicine, general pediatrics, and general obstetrics and gynecology. An HMO that provides the services covered by these fields through at least a general or family practitioner, or a pediatrician and a general internist, is considered to be providing primary care.

(3) The services must be available and accessible with reasonable promptness to each of the HMO's enrollees as ensured through—

(i) Staffing patterns within generally accepted norms for meeting the projected enrollment needs; and

(ii) Geographic location, hours of operation, and arrangements for after-hours services. (Medically necessary emergency services must be available 24 hours a day, 7 days a week.)

(c) Continuity of care. The HMO must ensure continuity or care through arrangements that include but are not limited to the following:

(1) Use of a health professional who is primarily responsible for coordinating the enrollee's overall health care.

(2) A system of health and medical records that accumulates pertinent information about the enrollee's health care and makes it available to appropriate professionals.

(3) Arrangements made directly or through the HMO's providers to ensure that the HMO or the health professional who coordinates the enrollee's overall health care is kept informed about the services that the referral resources furnish to the enrollee.

(d) *Confidentiality of health records.* Each HMO must establish adequate procedures to ensure the confidentiality of the health and medical records of its enrollees.

§ 417.107 [Reserved].

3. Section 417.107 is removed and reserved.

§§ 417.108 and 417.109 [Redesignated as §§ 417.168 and 417.169]

4. Sections 417.108 and 417.109 are redesignated under subpart F as §§ 417.168 and 417.169, respectively.

D. A new subpart C, containing §§ 417.120, 417.122, 417.124, and 417.126 is added to read as follows.

Subpart C—Qualified Health Maintenance Organizations: Organization and Operation

Sec.

417.120 Fiscally sound operation and assumption of financial risk.
417.122 Protection of enrollees.
417.124 Administration and management.
417.126 Recordkeeping and reporting requirements.

Subpart C—Qualified Health Maintenance Organizations: Organization and Operation

§ 417.120 Fiscally sound operation and assumption of financial risk.

(a) *Fiscally sound operation—(1) General requirements.* Each HMO must have a fiscally sound operation, as demonstrated by the following:

(i) Total assets greater than total unsubordinated liabilities. In evaluating assets and liabilities, loan funds awarded or guaranteed under section 1306 of the Public Health Service Act are not included as liabilities.

(ii) Sufficient cash flow and adequate liquidity to meet obligations as they become due.

(iii) A net operating surplus, or a financial plan that meets the requirements of paragraph (a)(2) of this section.

(iv) An insolvency protection plan that meets the requirements of § 417.122(b) for protection of enrollees.

(v) A fidelity bond or bonds, procured and maintained by the HMO, in an amount fixed by its policymaking body but not less than $100,000 per individual, covering each officer and employee entrusted with the handling of its funds. The bond may have reasonable deductibles, based upon the financial strength of the HMO.

(vi) Insurance policies or other arrangements, secured and maintained by the HMO and approved by HCFA to insure the HMO against losses arising from professional liability claims, fire, theft, fraud, embezzlement, and other casualty risks.

(2) *Financial plan requirement.* (i) If an HMO has not earned a cumulative net operating surplus during the three most recent fiscal years, did not earn a net operating surplus during the most recent fiscal year or does not have positive net worth, the HMO must submit a financial plan satisfactory to HCFA to achieve net operating surplus within available fiscal resources.

(ii) This plan must include—

(A) A detailed marketing plan;

(B) Statements of revenue and expense on an accrual basis;

(C) Sources and uses of funds statements; and

(D) Balance sheets.

(b) *Assumption of financial risk.* Each HMO must assume full financial risk on a prospective basis for the provision of basic health services, except that it may obtain insurance or make other arrangements as follows:

(1) For the cost of providing to any enrollee basic health services with an aggregate value of more than $5,000 in any year.

(2) For the cost of basic health services obtained by its enrollees from sources other than the HMO because medical necessity required that they be furnished before they could be secured through the HMO.

(3) For not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for that fiscal year.

(4) For physicians or other health professionals, health care institutions, or any other combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for their furnishing of basic health services to the HMO's enrollees.

§ 417.122 Protection of enrollees.

(a) *Liability protection.* (1) Each HMO must adopt and maintain arrangements satisfactory to HCFA to protect its enrollees from incurring liability for payment of any fees that are the legal obligation of the HMO. These arrangements may include any of the following:

(i) Contractual arrangements that prohibit health care providers used by the enrollees from holding any enrollee liable for payment of any fees that are the legal obligation of the HMO.

(ii) Insurance, acceptable to HCFA.

(iii) Financial reserves, acceptable to HCFA, that are held for the HMO and restricted for use only in the event of insolvency.

(iv) Any other arrangements acceptable to HCFA.

(2) The requirements of this paragraph do not apply to an HMO if HCFA determines that State law protects the HMO enrollees from liability for payment of any fees that are the legal obligation of the HMO.

(b) *Protection against loss of benefits if the HMO becomes insolvent.* The insolvency protection plan required under § 417.120(a) must provide for continuation of benefits as follows:

(1) For all enrollees, for the duration of the contract period for which payment has been made.

(2) For enrollees who are in an inpatient facility on the date of insolvency, until they are discharged from the facility.

§ 417.124 Administration and management.

(a) *General requirements.* Each HMO must have administrative and managerial arrangements satisfactory to HCFA, as demonstrated by at least the following:

(1) A policymaking body that exercises oversight and control over the HMO's policies and personnel to ensure that management actions are in the best interest of the HMO and its enrollees.

(2) Personnel and systems sufficient for the HMO to organize, plan, control and evaluate the financial, marketing, health services, quality assurance program, administrative and management aspects of the HMO.

(3) At a minimum, management by an executive whose appointment and removal are under the control of the HMO's policymaking body.

(b) *Full and fair disclosure*—(1) *Basic rule.* Each HMO must prepare a written description of the following:

(i) Benefits (including limitations and exclusions).

(ii) Coverage (including a statement of conditions on eligibility for benefits).

(iii) Procedures to be followed in obtaining benefits and a description of circumstances under which benefits may be denied.

(iv) Rates.

(v) Grievance procedures.

(vi) Service area.

(vii) Participating providers.

(viii) Financial condition including at least the following most recently audited information: Current assets, other assets, total assets; current liabilities, long term liabilities; and net worth.

(2) *Requirements for the description.* (i) The description must be written in a way that can be easily understood by the average person who might enroll in the HMO.

(ii) The description of benefits and coverage may be in general terms if reference is made to a detailed statement of benefits and coverage that is available without cost to any person who enrolls in the HMO or to whom the opportunity for enrollment is offered.

(iii) The HMO must provide the description to any enrollee or person who is eligible to elect the HMO option and who requests the material from the HMO or the administrator of a health benefits plan. For purposes of this requirement, "administrator" (of a health benefits plan) has the meaning it is given in the Employment Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. 1002(16)(A).

(iv) If the HMO provides health services through individual practice associations (IPAs), the HMO must specify the number of member physicians by specialty, and a listing of the hospitals where HMO enrollees will receive basic and supplemental health services.

(v) If the HMO provides health services other than through IPAs, the HMO must specify, for each ambulatory care facility, the facility's address, days and hours of operation, and the number of physicians by specialty, and a listing of the hospitals where HMO enrollees will receive basic and supplemental health services.

(c) *Broadly representative enrollment.* (1) Each HMO must offer enrollment to persons who are broadly representative of the various age, social, and income groups within its service area.

(2) If an HMO has a medically underserved population located in its service area, not more than 75 percent of its enrollees may be from the medically underserved population unless the area in which that population resides is a rural area.

(d) *Health status and enrollment.* (1) The HMO may not, on the basis of health status, health care needs, or age of the individual—

(i) Expel or refuse to reenroll any enrollee; or

(ii) Refuse to enroll individual members of a group.

(2) For purposes of this paragraph, a "group" is composed of individuals who enroll in the HMO under a contract or other arrangement that covers two or more subscribers. Examples of groups are employees who enroll under a contract between their employer and the HMO, or members of an organization that arranges coverage for its membership.

(3) Nothing in this subpart prohibits an HMO from requiring that, as a condition for continued eligibility for enrollment, enrolled dependent children, upon reaching a specified age, convert to individual enrollment, consistent with paragraph (e) of this section.

(e) *Conversion of enrollment.* (1) Each HMO must offer individual enrollment to the following:

(i) Each enrollee (and his or her enrolled dependents) leaving a group.

(ii) Each enrollee who would otherwise cease to be eligible for HMO enrollment because of his or her age, or the death or divorce of an enrollee.

(2) The individual enrollment offered must meet the conditions of subpart B of this part and this subpart C.

(3) The HMO is not required to offer individual enrollment except to the enrollees specified in this paragraph.

(f) [Reserved]

(g) *Grievance procedures.* Each HMO must have and use meaningful procedures for hearing and resolving grievances between the HMO's enrollees and the HMO, including the HMO staff and medical groups and IPAs that furnish services. These procedures must ensure that:

(1) Grievances and complaints are transmitted in a timely manner to appropriate HMO decisionmaking levels

that have authority to take corrective action; and

(2) Appropriate action is taken promptly, including a full investigation if necessary and notification of concerned parties as to the results of the HMO's investigation.

(h) *Certification of institutional providers.* Each HMO must ensure that its affiliated institutional providers meet one of the following conditions:

(1) In the case of hospitals, are either accredited by the Joint Commission on Accreditation of Health Care Organizations, or certified by Medicare.

(2) In the case of laboratories, are either CLIA-exempt, or have in effect a valid certificate of one of the following types, issued by HCFA in accordance with section 353 of the PHS Act and part 493 of this chapter:

(i) Registration certificate.

(ii) Certificate.

(iii) Certificate of waiver.

(iv) Certificate of accreditation.

(3) In the case of other affiliated institutional providers, are certified for participation in Medicare and Medicaid in accordance with part 405, 416, 418, 488, or 491 of this chapter, as appropriate.

§ 417.126 Recordkeeping and reporting requirements.

(a) *General reporting and disclosure requirements.* Each HMO must have an effective procedure to develop, compile, evaluate, and report to HCFA, to its enrollees, and to the general public, at the times and in the manner that HCFA requires, and while safeguarding the confidentiality of the doctor-patient relationship, statistics and other information with respect to the following:

(1) The cost of its operations.

(2) The patterns of utilization of its services.

(3) The availability, accessibility, and acceptability of its services.

(4) To the extent practical, developments in the health status of its enrollees.

(5) Information demonstrating that the HMO has a fiscally sound operation.

(6) Other matters that HCFA may require.

(b) *Significant business transactions.* Each HMO must report to HCFA annually, within 120 days of the end of its fiscal year (unless for good cause shown, HCFA authorizes an extension of time), the following:

(1) A description of significant business transactions (as defined in paragraph (c) of this section) between the HMO and a party in interest.

(2) With respect to those transactions—

(i) A showing that the costs of the transactions listed in paragraph (c) of this section do not exceed the costs that would be incurred if these transactions were with someone who is not a party in interest; or

(ii) If they do exceed, a justification that the higher costs are consistent with prudent management and fiscal soundness requirements.

(3) A combined financial statement for the HMO and a party in interest if either of the following conditions is met:

(i) Thirty-five percent or more of the costs of operation of the HMO go to a party in interest.

(ii) Thirty-five percent or more of the revenue of a party in interest is from the HMO.

(c) *"Significant business transaction" defined.* As used in paragraph (b) of this section—

(1) Business transaction means any of the following kinds of transactions:

(i) Sale, exchange or lease of property.

(ii) Loan of money or extension of credit.

(iii) Goods, services, or facilities furnished for a monetary consideration, including management services, but not including—

(A) Salaries paid to employees for services performed in the normal course of their employment; or

(B) Health services furnished to the HMO's enrollees by hospitals and other providers, and by HMO staff, medical groups, or IPAs, or by any combination of those entities.

(2) *Significant business transaction* means any business transaction or series of transactions of the kind specified in paragraph (c)(1) of this section that, during any fiscal year of the HMO, have a total value that exceeds $25,000 or 5 percent of the HMO's total operating expenses, whichever is less.

(d) *Requirements for combined financial statements.* (1) The combined financial statements required by paragraph (b)(3) of this section must display in separate columns the financial information for the HMO and each of these parties in interest.

(2) Inter-entity transactions must be eliminated in the consolidated column.

(3) These statements must have been examined by an independent auditor in accordance with generally accepted accounting principles, and must include appropriate opinions and notes.

(4) Upon written request from an HMO showing good cause, HCFA may waive the requirement that its combined financial statement include the financial information required in this paragraph (d) with respect to a particular entity.

(e) *Reporting and disclosure under ERISA.* (1) For any employees' health benefits plan that includes an HMO in its offerings, the HMO must furnish, upon request, the information the plan needs to fulfill its reporting and disclosure obligations (with respect to the particular HMO) under the Employee Retirement Income Security Act of 1974 (ERISA).

(2) The HMO must furnish the information to the employer or the employer's designee, or to the plan administrator, as the term "administrator" is defined in ERISA.

E. Subpart D is amended as set forth below:

Subpart D—Application for Federal Qualification

1. Sections 417.140 and 417.141 are revised to read as follows:

§ 417.140 Applicability.

The regulations in this subpart apply to any entity seeking a determination by HCFA, under section 1310(d) of the PHS Act, that it is a qualified health maintenance organization (HMO).

§ 417.141 Definitions.

As used in this subpart—

Operational qualified HMO means an HMO that HCFA has determined provides basic and supplemental health services to all of its enrollees in accordance with subpart B of this part and §§ 417.168 and 417.169, and is organized and operated in accordance with subpart C of this part and §§ 417.168 and 417.169.

Preoperational qualified HMO means an entity that HCFA has determined will, when it becomes operational, be a qualified HMO.

Transitionally qualified HMO means an entity that operates a prepaid health care delivery system and that HCFA has determined meets the requirements of § 417.142(b). A transitionally qualified HMO is considered a "qualified HMO" for the purpose of compliance by an employer with the requirements of section 1310 of the PHS Act and subpart E of this part. Under these requirements, the employer must include the HMO in its health benefits plan so long as the HMO's qualification has not been revoked under section 1312(b) of the PHS Act and § 417.163(d).

2. Section 417.142 is revised to read as follows:

§ 417.142 Requirements for qualification.

On the basis of an application submitted in accordance with this subpart and any additional information and investigation (including site visits) that HCFA may require:

(a) HCFA determines that the applicant is an operational qualified

HMO if HCFA finds that the applicant meets the requirements of subparts B and C of this part and §§ 417.168 and 417.169, and the applicant provides written assurances satisfactory to HCFA, within 30 days of the date of HCFA's determination, that it:

(1) Provides and will provide basic health services (and any contracted for supplemental health services) to its enrollees;

(2) Provides and will provide these services in the manner prescribed by section 1301(b) of the PHS Act and subpart B of this part and §§ 417.168 and 417.169;

(3) Is organized and operated, and will continue to be organized and operated, in the manner prescribed by section 1301(c) of the PHS Act and subpart C of this part and §§ 417.168 and 417.169;

(4) Under arrangements that safeguard the confidentiality of patient information and records, will provide access to HCFA and the Comptroller General or any of their duly authorized representatives for the purpose of audit, examination or evaluation to any books, documents, papers, and records of the entity relating to its operations as an HMO, and to any facilities operated by the entity; and

(5) Will continue to comply with any other assurances that the entity has given to HCFA.

(b) HCFA may determine that an applicant is a transitionally qualified HMO upon finding that it currently is organized and is providing prepaid health services as described in this paragraph and if it provides written assurances satisfactory to HCFA, within 30 days of the date of HCFA's determination, that it will:

(1) With respect to all new group and individual (nongroup) contracts that it enters into after the date of HCFA's determination, provide basic health services (and any contracted for supplemental health services) to enrollees enrolled under these contracts and will provide these services in the manner prescribed by subpart B of this part and §§ 417.168 and 417.169, and with respect to these enrollees will be organized and operated in accordance with subpart C of this part and §§ 417.168 and 417.169.

(2) With respect to its group and individual contracts that are in effect on the date of HCFA's determination and that are renewed or renegotiated during the period approved by HCFA under paragraph (b)(2)(iii) of this section in accordance with the plan so approved:

(i) Provide at least those services specified in the following sections (except that these services may be limited as to time and cost): § 417.101(a)(1) (physician services); § 417.101(a)(2) (outpatient services and inpatient hospital services) except that inpatient hospital services or outpatient services by a hospital, or both, need not be provided, or paid for by the HMO if the HMO can show that these services are, or insurance for these services is, being provided through arrangements made by entities other than the HMO; § 417.101(a)(3) (medically necessary emergency health services); and § 100.102(a)(6) (diagnostic laboratory and diagnostic and therapeutic radiologic services);

(ii) Be organized and operated in accordance with subpart C of this part and §§ 417.68 and 417.69, except that—

(A) It need not assume full financial risk for the provision of basic health services as required by § 417.120(b); and

(B) It need not abide by the insurance limitations of § 417.120 (b)(1) and (b)(3);

(iii) Provide that payment for basic health services will be in accordance with § 417.104 except that it need not comply with—

(A) The requirements for a community rating system as set forth in § 417.104(a)(3);

(B) The limitations on copayments as set forth in § 417.104(a)(4); and

(C) The requirement of § 417.105(b) that supplemental health services payments that are fixed on a prepayment basis be fixed under a community rating system;

(iv) Implement a time-phased plan acceptable to HCFA which specifies definite steps for meeting, at the time of renewal of each group or individual contract, but no later than 3 years after the date of HCFA's determination, all the requirements of subparts B and C of this part and §§ 417.168 and 417.169; and

(v) Upon completion of the time-phased plan—

(A) Provide basic and supplemental health services to all of its enrollees;

(B) Provide these services to all of its enrollees in the manner prescribed by subpart B of this part and §§ 417.168 and 417.169; and

(C) Be organized and operate in the manner prescribed by subpart C of this part and §§ 417.168 and 417.169.

(c) HCFA may determine that an applicant is a preoperational qualified HMO if it provides, within 30 days of HCFA's determination, satisfactory assurances that it will become operational within 60 days following that determination and will, when it becomes operational, meet the requirements of subparts B and C of this part and §§ 417.168 and 417.169. Upon notification by the applicant to HCFA that it has become operational, HCFA will, within 30 days of this notification, make a determination whether the applicant is an operational qualified HMO. In the absence of this determination, the organization is not an operational qualified HMO even though it becomes operational.

(d) If HCFA determines that an applicant meets the requirements for qualification and the applicant fails to sign its assurances within 30 days following the date of the determination, then HCFA will notify the applicant in writing that its application is considered withdrawn and that it is not a qualified HMO.

(e) An HMO that has more than one regional component, as described in § 417.104(b)(3)(iii), will be considered qualified for those regional components for which assurances have been signed in accordance with this section.

F. The title of subpart F is revised and subpart F is amended as set forth below:

Subpart F—Continued Regulation of Qualified HMOs

1. Sections 417.160 through 417.162 are revised to read as follows:

§ 417.160 Purpose and applicability.

This subpart applies to any entity that was determined by HCFA to be a qualified health maintenance organization (HMO) under subpart D of this part, or that provided written assurances to HCFA as a condition for receiving financial assistance under subpart V of this part, and sets forth procedures for enforcing the assurances given to HCFA by these entities.

§ 417.161 Compliance with assurances.

Any entity subject to this subpart must comply with the assurances that it provided to HCFA, unless compliance is waived under § 417.166.

§ 417.162 Reporting requirements.

Entities subject to this subpart must submit:

(a) The reports that may be required by HCFA under § 417.126, and

(b) Any additional reports HCFA may reasonably require.

2. Redesignated §§ 417.168 and 417.169 are revised to read as follows:

§ 417.168 Special requirements: titles XVIII and XIX of the Social Security Act.

(a) As provided in section 1307(d) of the PHS Act, an HMO that otherwise complies with section 1301(b) and section 1301(c) of the PHS Act, and with the applicable regulations of subparts B and C of this part and § 417.169, and that has enrollees who are entitled to insurance benefits under title XVIII of

the Act or to medical assistance under a State plan approved under title XIX of the Act, may still be considered to be an HMO if, with respect to its title XVIII and title XIX enrollees, it provides services and is operated as required by title XVIII or title XIX, as appropriate, and by implementing regulations.

(b) Notwithstanding any inconsistent requirements of subparts B and C of this part and § 417.169, an HMO that enters into a contract with HCFA under title XVIII of the Act or with a State under title XIX of the Act must, with respect to its enrollees entitled to insurance benefits or medical assistance under those titles, comply with the applicable title XVIII or title XIX requirements, including deductible and coinsurance requirements, enrollment mix and enrollment practice requirements, in accordance with the provisions of title XVIII or the title XIX State plan of the State with which it is contracting. Copayment options that are not in accordance with a title XIX State plan may not be imposed on title XIX enrollees.

(c) Any grievance procedures authorized under title XVIII or title XIX of the Act are not superseded by the provisions of § 417.124(g).

§ 417.169 Special requirements: Federal employee health benefits program.

An entity that provides health services to a defined population on a prepaid basis and that has enrollees who are enrolled under the health benefits program authorized by Chapter 89 of Title 5, United States Code, may be considered to be an HMO for purposes of receiving assistance under this part if, with respect to its other enrollees, it—

(a) Provides health services in accordance with section 1301(b) of the Act, subpart B of this part, and § 417.168; and

(b) Is organized and operated in the manner prescribed by section 1301(c) of the PHS Act, subpart C of this part, and § 417.168.

G. Subpart J is amended as set forth below:

Subpart J—Qualifying Conditions for Medicare Contracts

§ 417.401 [Amended]

1. In § 417.401 the following changes are made:

a. The following definitions are removed:

Affiliated organization.
Current demonstration project Medicare enrollee.
Current nonrisk Medicare enrollee.
Current risk Medicare enrollee.
Eligible organization.
Enrollee.
Entity with an existing cost contract.
Entity with an existing risksharing contract.
Reasonable cost reimbursement contract.

b. The definition of *Emergency services* is revised to read as follows:

§ 417.401 Definitions.

* * * * *

Emergency services means covered inpatient or outpatient services that—(1) Are furnished by an appropriate source other than the HMO or CMP;

(2) Are needed immediately because of an injury or sudden illness; and

(3) Cannot be delayed for the time required to reach the HMO's or CMP's providers or suppliers (or alternatives authorized by the HMO or CMP) without risk of permanent damage to the patient's health.

These services are considered to be emergency services as long as transfer of the enrollee to the HMO's or CMP's source of health care or designated alternative is precluded because of risk to the enrollee's health or because transfer would be unreasonable, given the distance involved in the transfer and the nature of the medical condition.

* * * * *

c. In the definition of *Existing demonstration project*, the defined term is revised to read *Demonstration project* and the entire definition is placed in appropriate alphabetical order.

d. The definition of *New Medicare enrollee* is revised to read as follows:

§ 417.401 Definitions.

* * * * *

New Medicare enrollee means a Medicare enrollee who—

(1) Enrolls with an HMO or CMP after the date on which the HMO or CMP first enters into a risk contract under subpart L of this part;

(2) Is entitled to both Part A and Part B benefits under Medicare or Part B benefits only at the time of the enrollment; and

(3) Was not enrolled with the HMO or CMP at the time he or she became entitled to benefits under Part A or eligible to enroll in Part B of Medicare.

* * * * *

e. The definition of *New risk contract* is removed and a definition of "Risk contract" is added to read as follows:

§ 417.401 Definitions.

* * * * *

Risk contract means a contract entered into under section 1876(g) of the Act on or after February 1, 1985.

* * * * *

f. The word "organization" in its singular, plural, and possessive forms is revised to read "HMO or CMP", "HMOs or CMPs", and "HMO's or CMP's", respectively, and the term "eligible organization" in its singular, plural, and possessive forms, is revised to read "HMO or CMP", "HMOs or CMPs", and "HMO's or CMP's", respectively, in the following definitions:

Adjusted average per capita cost;
Adjusted community rate;
Arrangement or arrangements;
Benefit stabilization fund;
Geographic area;
Medicare enrollee; and
Urgently needed services.

2. Section 417.402 is revised to read as follows:

§ 417.402 Effective date of initial regulations.

The changes made to section 1876 of the Act by section 114 of the Tax Equity and Fiscal Responsibility Act of 1982 became effective on February 1, 1985, the effective date of the initial implementing regulations.

3. Section 417.418 is revised to read as follows:

§ 417.418 Qualifying condition: Quality assurance program.

(a) *Condition.* The HMO or CMP must make arrangements for a quality assurance program that meets the requirements of this section.

(b) *Standard.* An HMO or CMP must have an ongoing quality assurance program that meets the requirements set forth in § 417.106(a).

H. Subpart K is amended as set forth below:

Subpart K—Enrollment, Entitlement, and Disenrollment Under Medicare Contract

1. Section 417.436 is revised to read as follows:

§ 417.436 Rules for enrollees.

(a) *Maintaining rules.* An HMO or CMP must maintain written rules that deal with, but need not be limited to the following:

(1) All benefits provided under the contract, as described in § 417.440.

(2) How and where to obtain services from or through the HMO or CMP.

(3) The restrictions on coverage for services furnished from sources outside a risk HMO or CMP, other than emergency services and urgently needed services (as defined in § 417.401).

(4) The obligation of the HMO or CMP to assume financial responsibility and provide reasonable reimbursement for emergency services and urgently needed services as required by § 417.414(c).

(5) Any services other than the emergency or urgently needed services that the HMO or CMP chooses to provide as permitted by this part, from sources outside the HMO or CMP. A cost HMO or CMP must disclose that the enrollee may receive services through any Medicare providers and suppliers.

(6) Premium information, including the amount (or if the amount cannot be included, the telephone number of the source from which this information may be obtained) and the procedures for paying premiums and other charges for which enrollees may be liable.

(7) Grievance and appeal procedures.

(8) Disenrollment rights.

(9) The obligation of an enrollee who is leaving the HMO's or CMP's geographic area for more than 90 days to notify the HMO or CMP of the move or extended absence and the HMO's or CMP's policies concerning retention of enrollees who leave the geographic area for more than 90 days, as described in § 417.460(a)(2).

(10) The expiration date of the Medicare contract with HCFA and notice that both HCFA and the HMO or CMP are authorized by law to terminate or refuse to renew the contract, and that termination or nonrenewal of the contract may result in termination of the individual's enrollment in the HMO or CMP.

(11) Advanced directives as specified in paragraph (d) of this section.

(12) Any other matters that HCFA may prescribe.

(b) *Availability of rules.* The HMO or CMP must furnish a copy of the rules to each Medicare enrollee at the time of enrollment and at least annually thereafter.

(c) *Changes in rules.* If an HMO or CMP changes its rules, it must submit the changes to HCFA in accordance with § 417.428(a)(3), and notify its Medicare enrollees of the changes at least 30 days before the effective date of the changes.

(d) *Advance directives.* (1) An HMO or CMP must maintain written policies and procedures concerning advance directives, as defined in § 489.100 of this chapter, with respect to all adult individuals receiving medical care by or through the HMO or CMP and are required to:

(i) Provide written information to those individuals concerning—

(A) Their rights under State law (whether statutory or recognized by the courts of the State) to make decisions concerning their medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate, at the individual's option, advance directives; and

(B) The HMO's or CMP's written policies respecting the implementation of those rights, including a clear and precise statement of limitation if the HMO or CMP cannot implement an advance directive as a matter of conscience;

(ii) Provide the information specified in paragraph (d)(1)(i) of this section to each enrollee at the time of enrollment;

(iii) Document in the individual's medical record whether or not the individual has executed an advance directive;

(iv) Not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

(v) Ensure compliance with requirements of State law (whether statutory or recognized by the courts of the State) regarding advance directives;

(vi) Provide for education of staff concerning its policies and procedures on advance directives; and

(vii) Provide for community education regarding advance directives either directly or in concert with other providers or entities.

(2) The HMO or CMP—

(i) Is not required to provide care that conflicts with an advance directive.

(ii) Is not required to implement an advance directive if, as a matter of conscience, the provider cannot implement an advance directive and State law allows any health care provider or any agency of the provider to conscientiously object.

2. Section 417.444 is revised to read as follows:

§ 417.444 Special rules for certain enrollees of risk HMOs and CMPs.

(a) *Applicability.* This section applies to any Medicare enrollee of a risk HMO or CMP who meets the following conditions:

(1) On February 1, 1985, was enrolled—

(i) In an HMO or CMP that had in effect a cost contract entered into under section 1876 of the Act in accordance with regulations in effect before February 1, 1985; or

(ii) In an HCPP that was being reimbursed on a reasonable cost basis under section 1833(a)(1)(A) of the Act.

(2) Has continued enrollment in the same entity without interruption or disenrolled after February 1, 1985, and later reenrolled in the same entity.

(b) *Retention of nonrisk status*—(1) A "nonrisk" enrollee is a Medicare beneficiary who meets the conditions of paragraph (a) of this section and is enrolled in an entity that enters into a risk contract as an HMO or CMP. A "nonrisk" enrollee may retain nonrisk status indefinitely unless HCFA determines under paragraph (c)(1) of this section, that the enrollee's status must be changed, or the enrollee requests the change, as provided in paragraph (c)(2) of this section.

(2) A nonrisk enrollee of a risk HMO or CMP is not entitled to additional benefits under § 417.442.

(c) *Conversion to risk status*—(1) *Conversion based on HCFA determination.* If HCFA determines that, for administrative reasons or because there are fewer than 75 current nonrisk Medicare enrollees remaining in the HMO or CMP, all of its nonrisk Medicare enrollees must be covered under the risk provisions of the contract, the conversion process is as follows:

(i) HCFA notifies each affected enrollee of the decision at least 90 days prior to the effective date.

(ii) The nonrisk Medicare enrollees complete and sign forms stating that they understand and accept the new rules and benefits that will be applicable to them.

(iii) The HMO or CMP notifies each affected enrollee, in writing, at least 30 days in advance, of the date upon which his or her coverage under the risk portion of the contract takes effect.

(2) *Conversion based on enrollee's request.* A nonrisk Medicare enrollee requests, using a form identical or similar to the form described in paragraph (c)(1) of this section, that he or she be covered under the risk portion of the contract.

(d) *Notification.* An HMO or CMP converting from a cost contract to a risk contract must, within 60 days of signing the risk contract, inform nonrisk enrollees of their right to remain nonrisk Medicare enrollees or to convert to risk enrollment at any time in accordance with paragraph (c)(2) of this section.

3. Section 417.460 revised to read as follows:

§ 417.460 Disenrollment of beneficiaries and termination of payments to an HMO or CMP.

(a) *Disenrollment of health insurance program beneficiaries.* An HMO or CMP may not, orally or in writing, or by any action or inaction, request or encourage a Medicare enrollee to disenroll, except in the following circumstances:

(1) *Failure to pay premiums*—(i) *Basic rules.* Except as specified in paragraph (a)(1)(iii) of this section, an HMO or CMP may disenroll a Medicare enrollee who fails to pay premiums or other charges imposed by the HMO or CMP for deductible and coinsurance amounts

for which the enrollee is liable, if the HMO or CMP—

(A) Can demonstrate to HCFA that it made reasonable efforts to collect the unpaid amount;

(B) Gives the enrollee written notice of disenrollment, including an explanation of the enrollee's right to a hearing under the HMO's or CMP's grievance procedures; and

(C) Sends the notice of disenrollment to the enrollee before it notifies HCFA.

(ii) *When HCFA's liability ends* (A) HCFA's liability for monthly capitation payments to the HMO or CMP on behalf of the enrollee ends as of the first day of the month following the month in which disenrollment is effective, as shown on HCFA records.

(B) Disenrollment will be effective no earlier than the month immediately after, and no later than the third month after, the month in which HCFA receives the disenrollment notice in acceptable form.

(iii) *Exception.* If a Medicare enrollee of an HMO or CMP fails to pay the separate premium (or the corresponding portion of a single premium) for optional supplemental benefits (that is, a package of benefits that an enrollee is not required to accept) but pays the premium for the deductible and coinsurance amounts, the HMO or CMP may discontinue the optional supplemental benefits but may not disenroll the enrollee.

(2) *Enrollee moves out of the HMO's or CMP's geographic area*—(i) *Basic rule.* Except as provided in paragraph (a)(2)(iv) of this section, an HMO or CMP must disenroll a Medicare enrollee who moves out of its geographic area and does not voluntarily disenroll under paragraph (b) of this section if the HMO or CMP—

(A) Establishes, on the basis of a written statement from the enrollee or other evidence acceptable to HCFA, that the enrollee has permanently moved out of its geographic area; and

(B) Complies with the notice requirements set forth in paragraph (a)(1)(i) of this section.

(ii) *Failure to disenroll does not expand geographic area.* If the HMO or CMP does not disenroll an enrollee who moved out of its geographic area, that area is not automatically expanded to encompass the location of the enrollee's new residence.

(iii) *When HCFA's liability ends* The provisions of paragraph (a)(1)(ii) of this section apply.

(iv) *Exception.* An HMO or CMP may retain a Medicare enrollee who is absent from its geographic area for an extended period, but who remains within the United States as defined in § 400 200 of this chapter if the enrollee agrees. For purposes of this exception, the following provisions apply:

(A) An absence for an extended period means an uninterrupted absence from the HMO's or CMP's geographic area for more than 90 days but less than one year.

(B) The HMO or CMP and the enrollee may mutually agree upon restrictions for obtaining services while the enrollee is absent for an extended period from the HMO's or CMP's geographic area. However, restrictions may not be imposed on the scope of services described in § 471 440.

(C) When the enrollee returns to the HMO's or CMP's geographic area, the restrictions under § 417.448(a), which prohibit Medicare payment for services not provided or arranged for by the HMO or CMP apply again immediately.

(D) HMOs and CMPs that choose to exercise this exception must make the option available to all Medicare enrollees who are absent for an extended period from the HMO's or CMP's geographic area. (However, HMOs and CMPs may limit this option to enrollees who go to a geographic area served by an affiliated HMO or CMP.)

(E) If the enrollee fails to return to the HMO's or CMP's geographic area within 1 year of the date he or she left the geographic area, then the HMO or CMP must disenroll the beneficiary on the first day of the month following the anniversary of the date the enrollee left the geographic area under the provisions of paragraph (a)(2)(i) of this section.

(F) As used in this paragraph "affiliated HMO or CMP" means an HMO or CMP that is under common ownership or control of the HMO or CMP that seeks to retain the absent enrollees, or has in effect an agreement to furnish services to enrollees who are on an extended absence from the geographic area of the HMO or CMP that seeks to retain them

(3) *Failure to convert to risk provisions of contract*—(i) *Disenrollment and notice* A risk HMO or CMP must disenroll a current nonrisk Medicare enrollee if the enrollee refuses to convert to the risk provisions of the HMO's or CMP's contract after HCFA has determined under § 417 444(a)(1) that all of the HMO's or CMP's current nonrisk Medicare enrollees must be converted. The HMO or CMP must notify the enrollee that failure to convert will result in disenrollment. The notice must be sent at least 30 days before the HMO or CMP notifies HCFA of the disenrollment.

(ii) *When HCFA's liability ends.* The provisions of paragraph (a)(1)(ii) of this section apply.

(4) *Enrollee commits fraud or permits abuse of HMO or CMP enrollment card* (i) A Medicare beneficiary may be disenrolled by the HMO or CMP if the beneficiary knowingly provides, on the application form, fraudulent information upon which an HMO or CMP relies and which materially affects his or her eligibility to enroll in the HMO or CMP, or if the beneficiary intentionally permits others to use his or her enrollment card to receive services from the HMO or CMP.

(ii) In either case, the HMO or CMP must give the beneficiary a written notice of termination of enrollment. The notice must be mailed to the enrollee prior to the submission of the disenrollment notice to HCFA. The notice must include an explanation of the enrollee's right to have the disenrollment heard under the grievance procedures established under § 417.436.

(iii) HCFA's liability for monthly capitation payments to the HMO or CMP on behalf of the beneficiary terminates as of the first day of the month in which the termination of enrollment is made effective, as shown on HCFA records. In no event may that month be earlier than the month immediately following, or later than the third month following, the month in which the disenrollment notice is received in acceptable form by HCFA.

(iv) The HMO or CMP must report any disenrollment made under the provisions of this paragraph (a)(4) to the Inspector General of the department.

(5) *Enrollee's entitlement to benefits under the supplementary medical insurance program ends.* (i) HCFA's liability for monthly capitation payments to the HMO or CMP on behalf of the beneficiary ends with the month immediately following the last month of entitlement to benefits under Part B of Medicare. The beneficiary may be continued as an enrollee other than as a Medicare enrollee by the HMO or CMP under its regular plan if the HMO or CMP and the enrollee so choose.

(ii) If an enrollee loses entitlement to benefits under Part A of Medicare but remains entitled to benefits under Part B, the enrollee automatically continues as a Medicare enrollee of the HMO or CMP and is entitled to receive and have payment made for Part B services beginning with the month immediately following the last month of his or her entitlement of Part A benefits.

(6) *Disenrollment for cause*—(i) *When cause may be cited* An HMO or CMP may disenroll a Medicare enrollee for

cause if the enrollee's behavior is disruptive, unruly, abusive, or uncooperative to the extent that his or her continuing enrollment in the HMO or CMP seriously impairs the HMO's or CMP's ability to furnish services to either the particular enrollee or other enrollees.

(ii) *Effort to resolve the problem.* The HMO or CMP must make a serious effort to resolve the problem presented by the enrollee, including the use (or attempted use) of internal grievance procedures.

(iii) *Consideration of extenuating circumstances.* The HMO or CMP must ascertain that the enrollee's behavior is not related to the use of medical services or mental illness.

(iv) *Documentation.* The HMO or CMP must document the problems, efforts, and medical conditions as described in paragraphs (a)(6)(i), (a)(6)(ii), and (a)(6)(iii) of this section.

(v) *HCFA review of an HMO's or CMP's proposed disenrollment.* HCFA decides based on a review of the documentation submitted by the HMO or CMP, whether disenrollment requirements have been met. HCFA makes this decision 20 working days of receipt of the documentation material, and notifies the HMO or CMP within 5 working days after making its decision.

(vi) *Effective date of disenrollment.* If HCFA permits an HMO or CMP to disenroll an enrollee for cause, the disenrollment takes effect on the first day of the calendar month after the month in which the HMO or CMP complies with the notice requirements in paragraphs (a)(1)(i)(B) and (a)(1)(i)(C) of this section (other than the right to a hearing as described in paragraph (a)(1)(i)(B) of this section).

(vii) *When HCFA's liability ends.* The provisions of paragraph (a)(1)(ii)(A) of this section apply.

(7) *Death of the enrollee.* HCFA's liability for payments to the HMO or CMP on behalf of a Medicare enrollee who dies ends as of the first day of the month following the month of death.

(b) *Disenrollment by the enrollee.* (1) A Medicare enrollee may disenroll at any time by giving the HMO or CMP a signed, dated request in the form and manner prescribed by the HMO or CMP. The enrollee may request a certain disenrollment date but it may be no earlier than the first day of the month following the month in which the HMO or CMP receives the request. The HMO or CMP must submit a disenrollment notice to HCFA promptly.

(2) An HMO or CMP must provide the enrollee with a copy of the written request for disenrollment. Risk HMOs and CMPs must also provide a written statement explaining that the enrollee remains enrolled in the HMO or CMP until the effective date of the disenrollment, until that date, and is subject to the restrictions of § 417.448(a) which prohibit Medicare payment for services not provided or arranged for by the HMO or CMP.

(3) HCFA's responsibility for payments to the HMO or CMP ends with the close of the month of termination requested by the enrollee.

(4) If the HMO or CMP fails to submit the correct and complete notice required in paragraph (b)(1) of this section on a timely basis, the HMO or CMP must reimburse HCFA for any capitation payments received after the month in which payments would have ceased if the requirement had been met timely.

(c) *Effect of termination or default of contract*—(1) *Termination of contract.* If the contract between HCFA and the HMO or CMP is terminated by mutual consent or by unilateral action of either party, HCFA's liability for payments ends as of the first day of the month after the last month for which the contract is in effect.

(2) *Default of contract.* If the HMO or CMP defaults on the contract before the end of the contract year because of bankruptcy or other reasons, HCFA—

(i) Determines the month in which its liability for payments ends; and

(ii) Notifies the HMO or CMP and all affected Medicare enrollees as soon as practicable.

I. Subpart P is amended as set forth below:

Subpart P—Medicare Payment: Risk Basis

1. Section 417.590 is revised to read as follows:

§ 417.590 Computation of the average of the per capita rates of payment.

(a) *Computation by the HMO or CMP.* As indicated in § 417.584(b), before an HMO's or CMP's contract period begins, HCFA determines a per capita rate of payment for each class of the HMO's or CMP's Medicare enrollees. In order to determine the additional benefits required under § 417.592, weighted averages of those per capita rates must be computed separately for enrollees entitled to Part A and Part B, and for enrollees entitled only to Part B. Except as provided in paragraph (b) of this section, the HMO or CMP must make the computations.

(b) *Computation by HCFA.* If the HMO or CMP claims to have insufficient enrollment experience to make the computations required by paragraph (a) of this section, and HCFA agrees with the claim, HCFA makes the computations, using the best available information, which may include the enrollment experience of other risk HMOs and CMPs.

2. Section 417.597 is revised to read as follows:

§ 417.597 Withdrawal from a benefit stabilization fund.

(a) *Notification to HCFA.* An HMO's or CMP's request to make a withdrawal from its benefit stabilization fund for use during a contract period must be made when the HMO or CMP notifies HCFA of its ACR and the average of its per capita rates of payment for that contract period. In making its request, the HMO or CMP must—

(1) Indicate how it intends to use the withdrawn amounts;

(2) Justify the need for the withdrawal in terms of stabilizing the additional benefits it provides to Medicare enrollees;

(3) Document the HMO's or CMP's experience with fluctuations of revenue requirements relative to the additional benefits it provides to Medicare enrollees; and

(4) Document its experience during the contract period previous to the one for which it requests withdrawal to ensure that the HMO or CMP will not be using the withdrawn amounts to refinance losses suffered during that previous contract period.

(b) *Criteria for HCFA approval.* HCFA approves a request for a withdrawal from a benefit stabilization fund for use during the next contract period only if—

(1) The HMO's or CMP's average of its per capita rates of payment for the next contract period is less than that of the previous contract period;

(2) The HMO's or CMP's ACR for the next contract period is significantly higher than that of the previous contract period; or

(3) The HMO's or CMP's revenue requirements for the next contract period for providing the additional benefits it provided during the previous contract period is significantly higher than the requirements for that previous period and the ACR for the next contract period results in an additional benefits package that is less in total value than that of the previous contract period.

(c) *Basis for denial.* HCFA does not approve a request for a withdrawal from a benefit stabilization fund if the withdrawal would allow the HMO or CMP to—

(1) Offer without charge the supplemental services it provides to its Medicare enrollees under the provisions of § 417.440 (b)(2) or (b)(3); or

(2) Refinance prior contract period losses or to avoid losses in the upcoming contract period.

(d) *Form of payment.* Payment of monies withdrawn from a benefit stabilization fund is made, in equal parts, as an additional amount to the monthly advance payment made to the HMO or CMP under § 417.584 during the period of the contract.

J. Subpart Q is amended as set forth below:

Subpart Q—Beneficiary Appeals

Section 417.606 is revised to read as follows:

§ 417.606 Initial determinations.

(a) *Actions that are initial determinations.* An initial determination is a determination made by an HMO or CMP, or a carrier or intermediary acting for the HMO or CMP, concerning the rights of an enrollee with regard to services payable under Medicare that are furnished by the HMO or CMP. An initial determination is also any determination made with respect to—

(1) Reimbursement for emergency or urgently needed services;

(2) Any other health services furnished by a provider or supplier other than the HMO or CMP that the enrollee believes—

(i) Are covered under Medicare; and

(ii) Should have been furnished, arranged for, or reimbursed by the HMO or CMP.

(3) The HMO's or CMP's refusal to provide services that the enrollee believes it should furnish or arrange for, when the enrollee has not received the services outside the HMO or CMP.

(b) *Actions that are not initial determinations.* The following are not initial determinations for purposes of this subpart:

(1) A determination regarding services that were furnished by the HMO or CMP either directly or under arrangement, for which the enrollee has no further obligation for payment.

(2) A determination regarding services included in an optional supplemental plan (see § 417.440(b)(2)).

(c) *Relation to grievances.* A determination that is not an initial determination is subject only to a grievance procedure under § 417.436(a)(2).

K. Subpart V is amended as set forth below:

Subpart V—Administration of Outstanding Loans and Loan Guarantees

1. Sections 417.910 and 417.911 are revised to read as follows:

§ 417.910 Scope and applicability.

(a) *Scope.* This subpart sets forth the requirements and procedures for grants, loans, and loan guarantees awarded before October 1986 under sections 1303, 1304, 1305, and 1305A of the PHS Act.

(b) *Applicability.* (1) Sections 417.911 through 417.915 apply, in general, to all three types of financial assistance granted under this subpart.

(2) Sections 417 916 through 417.919 apply only to grants.

(3) Sections 417.920 through 417 926 apply to grants and loan guarantees for planning and initial development projects.

(4) Sections 417.930 through 417.937 apply to loans and loan guarantees for initial costs of operation.

§ 417.911 Definitions.

As used in this subpart—

Any 12-month period means the 12-month period beginning on the first day of any month.

Expansion of services means—(1) The addition of any health service not previously provided by or through the HMO, that requires an increase in the facilities, equipment, or health professionals of the HMO; or

(2) The improvement or upgrading of existing facilities or equipment, or an increase in the number of categories of health professionals, of the HMO so that the HMO could provide directly services that it previously provided through contract or referral or which it could not previously provide with its existing facilities or equipment.

First 60 months of operation or expansion means the 60-month period beginning on the first day of the month during which the HMO first provided services to enrollees, or in the case of significant expansion, first provided services in accordance with its expansion plan.

Health system agency means an entity that has been designated in accordance with section 1515 of the PHS Act; and the term *State health planning and development agency* means an agency that has been designated in accordance with section 1521 of the PHS Act.

Initial costs of operation means any cost incurred in the first 60 months of an operation or expansion that met any of the following requirements:

(1) Under generally accepted accounting principles or under accounting practices prescribed or permitted by State regulatory authority, was not a capital cost.

(2) Was required by State regulatory authority to meet reserves or tangible net equity requirements.

(3) Was for a payment made to reduce balance sheet liabilities existing at the beginning of the 60-month period, but only if—(i) The payment had been approved in writing by the Secretary; and

(ii) The total of these payments did not exceed 20 percent of the amount of the loan.

(4) Was for a small capital expenditure, but only if—(i) The cost had been approved in writing by the Secretary; and

(ii) The total of these costs did not exceed $200,000 in any 12-month period, and $400,000 during the first 60 months of operation or expansion.

Nonprofit as applied to a private entity, means a private agency, institution, or organization, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Significant expansion means—(1) A planned substantial increase in the enrollment of the HMO, that requires an increase in the number of health professionals serving enrollees of the HMO or an expansion of the physical capacity of the HMO's total health facilities; or

(2) A planned expansion of the service area beyond the current service area, that would be made possible by the addition of health service delivery facilities and health professionals to serve enrollees at a new site or sites in areas previously without service sites.

Small capital expenditure means expenditures for—(1) Equipment as defined in 45 CFR 74.132; or

(2) Alterations and renovations required to change the interior arrangements or other physical characteristics of an existing facility or installed equipment, so that it may be more effectively used for its currently designated purpose, or adapted to a changed use.

2. Section 417.920 is revised to read as follows:

§ 417.920 Planning and initial development.

(a) Under section 1304 of the PHS Act, grants and loan guarantees were awarded for projects for planning and initial development of HMOs.

(b) Planning projects included projects for any of the following:

(1) Establishment of an HMO.

(2) Significant expansion of the HMO's enrollment or geographic area.

(c) Initial development projects included projects for any of the following:

(1) Establishment of an HMO.

(2) Significant expansion of the HMO's enrollment or geographic area.

(3) Expansion of the range or amount of services furnished by the HMO.

3. Section 417 930 is revised to read as follows:

§ 417.930 Initial costs of operation.

Under section 1305 of the PHS, loans and loan guarantees were awarded for initial costs of operation of HMOs.

§ 417.931 [Removed]

4. Section 417 931 is removed.

L. Technical Amendments

§ 417.101 [Amended]

1. In § 417.101, the following changes are made:

a. Throughout the section, "shall" is changed to "must" (9 times), "member" and "members" are changed to "enrollee" and "enrollees", respectively (7 times), "Public Health Service Act" is revised to read "PHS Act" (3 times), and, except in paragraphs (a)(1), (a)(2) and (a)(8), "which" is changed to "that" (4 times).

b. In paragraph (a)(7), "a member's" is changed to "an enrollee's".

c. In paragraph (c) "§§ 417.100 through 417.109" is revised to read "§§ 417.101 through 417.106 and §§ 417.168 and 417.169".

d. In paragraph (d)(16), "the Secretary" is changed to "HCFA".

§ 417.143 [Amended]

2. In § 417.143, the following changes are made:

a. In paragraph (b)(2), "Public Health Service Act" is revised to read "PHS Act". "§§ 417.100 through 417.109 and 417.140 through 417.144 of this subpart" is revised to read "subparts B and C of this part, this subpart D, and §§ 417.168 and 417.169 of subpart F".

b. In paragraph (g), "§§ 417.140 through 417.144" is revised to read "this subpart".

§ 417.144 [Amended]

3. In § 417.144, the following changes are made:

a. In paragraph (a), "§§ 417.100 through 417.109 of this subpart" is revised to read "subparts B and C of this part and §§ 417.168 and 417.169".

b. In paragraphs (a) through (e), "the Secretary" is changed to "HCFA" (11 times).

c. In paragraphs (a), (c), and (d), "§§ 417.140 through 417.144" is revised to read "this subpart".

d. In paragraph (b), "which" is changed to "that", and "the Secretary's" is changed to "HCFA's".

e. In paragraph (d), the phrase "of Health and Human Services" is removed.

f. In paragraph (e), second sentence, "contained" is changed to "obtained".

§ 417.150 [Amended]

4. In § 417.150, the following changes are made:

a. The introductory text is revised to read: "As used in this subpart—".

b. In the definitions of "carrier" and "employer", "which" and "which organization" are changed to "that".

c. In the definition of "employee", "full-" is changed to "full-time".

d. In the definition of "health benefits plan", "of this subpart" is removed.

e. In the definition of "public entity", "Public Health Service" is changed to "PHS".

§ 417.151 [Amended]

5. In § 417.151, the following changes are made:

a. In the introductory text, "§§ 417.150 through 417.159" is revised to read "this subpart".

b. Throughout the section, "which" is changed to "that" (4 times) and "Public Health Service Act" is revised to read "PHS Act".

§ 417.152 [Amended]

6. In § 417.152, the following changes are made:

a. Throughout the section, "which" is changed to "that" (3 times), "shall" is changed to "must" (8 times), "Public Health Service Act" is revised to read "PHS Act", and "the Secretary" is changed to "HCFA".

b. In paragraph (c), "§§ 417.140 through 417.144 of this subpart" is revised to read "subpart D of this part".

c. In paragraph (c)(3), "organization" is changed to "HMO", "members of a medical group(s)" is revised to read "members of medical groups", and "members of an individual practice association(s)" is revised to read "members of individual practice associations".

d. In paragraph (c)(4), "through an individual practice association(s)" is revised to read "through individual practice associations", and "membership" is changed to "enrollment".

e. In paragraph (c)(6), "members" is changed to "enrollees".

§ 417.153 [Amended]

7. In § 417.153, the following changes are made:

a. The term "shall" is changed to "must" (2 times).

b. The term "membership" is changed to "enrollment" (3 times).

c. "§§ 417.150 through 417.159" is revised to read "this subpart" (3 times).

§ 417.154 [Amended]

8. In § 417.154, the following changes are made:

a. In the heading, and throughout the text, "which" is changed to "that" (9 times).

b. In paragraph (a) introductory text, and paragraphs (a)(2), (b) introductory text and (c), "§§ 417.150 through 417.159" is revised to read "this subpart".

c. In paragraphs (a)(1) and (a)(2), "organizations" and "organization" are changed to "HMOs" and "HMO", respectively.

d In paragraph (a)(2), "shall" is changed to "must" (2 times) and "§ 417.100" is changed to "417.1".

e. In paragraph (b), "shall" is changed to "must".

f. In paragraphs (b) introductory text, (b)(2) and (c), "membership" is changed to "enrollment".

§ 417.155 [Amended]

9 In § 417.155, the following changes are made:

a. In paragraph (a), "which" is changed to "that" (2 times); "shall" is changed to "must" the first two times it appears, and to "may" the third time; and "§ 417.107(c) of this subpart" and "§ 417.107(c)" are revised to read "§ 417.124(b)".

b. In paragraph (b), "shall" is changed to "must" (3 times).

c. In paragraph (c), "membership" is changed to "enrollment", "§§ 417.150 through 417.159" is revised to read "this subpart" (twice), "shall" is changed to "must", and "which" is changed to "that".

d. In paragraphs (d) and (e), "shall" is changed to "must" (6 times), "members" is changed to "enrollees" (twice), "membership" is changed to "enrollment", and "which" is changed to "that".

e. In paragraph (g), "shall" is changed to "may".

§ 417.157 [Amended]

10. In § 417.157, the following changes are made:

a. The term "shall" is changed to "must" in paragraphs (a)(1), (a)(3), (b), (e), (f), (g) introductory text, (g)(2), and (h), and to "will" in paragraphs (d) and (g)(1).

b. The term "membership" is changed to "enrollment" in paragraphs (b) and (c).

c. The term "which" is changed to "that" in paragraphs (a)(2), (g)(2), and (h).

d. In paragraph (h), "the Secretary" is changed to "HCFA", "her" is changed to "its", the phrase "to the Secretary" is removed, and "§§ 417.150 through 417.159." is revised to read "this subpart.".

§ 417.159 [Amended]

11. In § 417.159, the following changes are made:

a. In the heading, "Public Health Service" is changed to "PHS", and "as amended" is removed (twice).

b. In the text, "§§ 417.150 through 417.159" is revised to read "this subpart", "membership" is changed to "enrollment", and "shall" is changed to "must".

§ 417.163 [Amended]

12. In § 417.163, the following changes are made:

a. Throughout the section (except the second time it appears in paragraph (d)(2)) "the Secretary" is changed to "HCFA" (26 times), and "his" is changed to "its" (3 times).

b. In paragraph (a), "shall" is changed to "must" and in paragraph (c), "shall" is changed to "will" the first 3 times it appears and to "must" the 4th and 5th times it appears.

c. In paragraph (b), "he" is changed to "it" (4 times), "§§ 417.160 through 417.166" is revised to read "this subpart", and the phrase "to him" is removed.

d. In paragraphs (c), (d)(1) and (d)(2), "which" is changed to "that" (5 times).

e. In paragraph (d), "Public Health Service" is changed to "PHS"; and "shall" is changed to "will" the first 5 times it appears, to "must" the 6th and 7th times it appears, and to "will" the 8th time it appears; "member" and "members" are changed to "enrollee" and "enrollees", respectively (6 times); "him" is changed to "it" (twice); "it" is changed to "the HMO"; and "he" is changed to "HCFA" (twice).

§ 417.164 [Amended]

13. In § 417.164, the following changes are made:

a. In the heading of the section, "Public Health Service" is changed to "PHS".

b. In paragraphs (a) and (b), "§§ 417.150 through 417.159 of this subpart" is revised to read "subpart E of this part" (4 times).

c. In paragraph (c), "§§ 417.120 through 417.126 and 417.130 through 417.137 of this subpart" is revised to read "subpart V of this part", and "§§ 417.140 through 417.144 of this subpart" is revised to read "subpart D of this part".

§ 417.165 [Amended]

14. In § 417.165, "Public Health Service Act" is revised to read "PHS Act", and "§§ 417.140 through 417.144 of this subpart" is revised to read "subpart D of this part".

§ 417.400 [Amended]

15. In paragraph (b), "It also specifies" is revised to read "Subparts N, O, and P set forth".

§ 417.404 [Amended]

16. In § 417.404, "eligible organization" is changed to "HMO" or CMP" (5 times), and "§§ 417.470 through 417.494" is revised to read "subpart L of this part".

§ 417.406 [Amended]

17. In § 417.406, the following changes are made:

a. The heading is revised to read: "Application and determination."

b. The term "eligible organizations" is changed to "HMO" in paragraph (a)(2), and to "HMO or CMP" elsewhere in the section (4 times).

c. In paragraph (a)(3), "Public Health Service Act" is revised to read "PHS Act", and "§§ 417.100 through 417.109" is revised to read "subparts B and C of this part and §§ 417.142, 417.168, and 417.169".

d. In paragraph (b)(2), "§ 417.494(b)(iii)" is changed to read "§ 417.494(b)".

§ 417.407 [Amended]

18. In § 417.407, the following changes are made:

a. The heading is revised to read: *"Definitions of HMO and CMP."*

b. Paragraph (a) is revised to read:

§ 417.407 Definitions of HMO and CMP.

(a) *State law.* To qualify as an HMO or CMP, an entity must be organized under the laws of any State and meet the definition under paragraph (b) or (c) of this section, respectively.

* * * * *

c. In paragraph (b), "Public Health Service (PHS)" is changed to "PHS" and "§§ 417.100 through 417.109" is revised to read "subparts B and C of this part and §§ 417.168 and 417.169".

d. In paragraph (c), "enrolled members" is changed to "enrollees" (thrice), "member" and "enrolled member" are changed to "enrollee", "§ 417.107(b)" is changed to "417.120(b)", and "§§ 417.107(a)(1)(i) through (iv) and (a)(3)" is revised to read "§§ 417.120(a)(1)(i) through (a)(1)(iv) and 417.122(a)".

§ 417.408 [Amended]

19. In § 417.408, the following changes are made:

a. The term "organization" is changed to "HMO or CMP" (5 times) and "organization's" is changed to "HMO's or CMP's".

b. In paragraph (a), "the Assistant Secretary for Health of the Department" is changed to "HCFA".

c. In paragraphs (b)(2) and (c)(3), "§§ 417.640 through 417.658" is revised to read "subpart R of this part".

§ 417.410 [Amended]

20. In § 417.410, the following changes are made:

a. The terms "organization" and "eligible organization" are changed to "HMO or CMP" (10 times) and "organization's" is changed to "HMO's or CMP's".

b. In paragraph (a), "members" is changed to "Medicare beneficiaries and other individuals and groups".

c. In paragraph (g), "§§ 417.530 through 417.598" is revised to read "subparts O and P of this part".

§ 417.414 [Amended]

21. In § 417.414, the following changes are made:

a. The terms "organization", "organizations" and "organization's" are changed to "HMO or CMP", "HMOs or CMPs", and "HMO's or CMP's", respectively (18 changes).

b. In paragraph (c)(2), "§§ 417.600 through 417.638" is revised to read "subpart Q of this part".

§ 417.418 [Amended]

21a. In paragraph (b) of § 417.418 "417.107(h)" is changed to "§ 417.106(a)".

§ 417.420 [Amended]

22. In § 417.420, the following changes are made:

a. The term "organization" is changed to "HMO or CMP" (5 times).

b. In paragraph (a), "§§ 417.470 through 417.494" is revised to read "subpart L of this part".

c. In paragraph (c)(2)(ii), "§§ 417.600 through 417.638" is revised to read "subpart Q of this part".

§ 417.422 [Amended]

23. In § 417.422, the following changes are made:

a. In the heading and in paragraph (a), "organization" and "organizations" are changed to "HMO or CMP" and "HMOs or CMPs", respectively (9 times).

b. In paragraph (a)(3), "this subpart or Subpart B of this part" is revised to read "subpart L of this part".

c. In paragraphs (b) and (c), "eligible organizations" is changed to "an HMO or CMP" (twice).

§ 417.424 [Amended]

24. In § 417.424, the following changes are made:

a. The terms "organization" and "organization's" are changed to "HMO or CMP" and "HMO's and CMP's", respectively (9 times).

b. In paragraph (a)(2), "§§ 417.412 through 417.418 of this part" is revised to read "subpart J of this part".

§ 417.426 [Amended]

25. In § 417.426, the following changes are made:

a. In paragraph (a)(1), "eligible organizations" is changed to "HMOs and CMPs".

b. In paragraphs (a) through (c), "organization" and "organization's" are changed to "HMO and CMP" and "HMO's or CMP's", respectively (6 times).

c. In paragraph (c) introductory text, "new members of" is revised to read "new enrollees under".

§ 417.440 [Amended]

26. In § 417.440, the following changes are made:

a. In the heading and throughout the section, "organization", "organizations" and "organization's" are changed to "HMO or CMP", "HMOs or CMPs", and HMO's or CMP's", respectively.

b. In paragraph (a)(2)(ii), "§§ 417.600 through 417.638" is revised to read "subpart Q of this part".

c. In paragraphs (b)(1) and (b)(4)(ii), "and supplies" is removed.

d. Paragraph (b)(3) is revised to read:

§ 417.440 Entitlement to health care services from an HMO or CMP.

* * * * *

(b) * * *

(3) *Supplemental services imposed by a risk HMO or CMP.* (i) Subject to HCFA's approval, a risk HMO or CMP may require Medicare enrollees to accept and pay for services in addition to those covered by Medicare. (ii) If the HMO or CMP elects this option, it must impose the requirement on all Medicare enrollees, without regard to health status. (iii) HCFA approves supplemental benefits of this type if HCFA determines that imposition of the requirements will not discourage other Medicare beneficiaries from enrolling in the risk HMO or CMP.

e. In paragraphs (d) introductory text and (e) introductory text, "of this part" is removed.

§ 417.448 [Amended]

27. In § 417.448, the following changes are made:

a. In the heading and throughout the section, the terms "organization", "organizations", and "organization's" are changed to "HMO or CMP", "HMOs or CMPs" and "HMO's or CMP's", respectively.

b. In paragraphs (b)(2) and (b)(3), "Current" is removed, and "nonrisk" is capitalized.

c. In paragraph (c), "the" is inserted immediately after "the organization and" and "membership" is changed to "enrollment".

§ 417.450 [Amended]

28. In § 417.450, the following changes are made:

a. In paragraph (a)(1), "Medicare's liability" is changed to "HCFA's liability".

b. In paragraphs (a), (b), and (c) "organization" is changed to "HMO or CMP" (7 times).

§ 417.452 [Amended]

29. In § 417.452, the following changes are made:

a. Throughout the section, except in paragraph (a)(2), "organization" and "organization's" are changed to "HMO or CMP" and "HMO's or CMP's", respectively (13 times).

b. In paragraph (b) introductory text, "or § 417.444(b)" is removed.

c. In paragraph (c), "payor" is changed to "payer".

d. At the end of paragraph (e), "Medicare enrollees in the organization" is revised to read "Medicare enrollee of the HMO or CMP".

§ 417.456 [Amended]

30. In § 417.456, the following changes are made:

a. Throughout the section, "organization" is changed to "HMO or CMP" (11 times).

b. In the definition of *amounts incorrectly collected*, "Medicare" is changed to "HCFA" the third time the word appears.

c. In paragraph (a)(3), "§§ 417.600 through 417.638" is revised to read "subpart Q of this part".

§ 417.470 [Amended]

31. In § 417.470, the following changes are made:

a. In paragraph (a), "§§ 417.472 through 417.494 implement" is revised to read "This subpart implements", and "organization" is changed to "HMO or CMP".

b. In paragraph (b) introductory text, "Sections 417.472 through 417.494 set forth" is revised to read "This subpart sets forth".

§ 417.472 [Amended]

32. In § 417.472, the following changes are made:

a. Throughout the section, "eligible organization" and "organization" are changed to "HMO or CMP" (6 times).

b. In paragraph (f), "of this part" is removed.

c. In paragraph (g), "the Secretary" is changed to "HCFA", and "he or she" is changed to "it".

§ 417.478 [Amended]

33. In § 417.478, the following changes are made:

a. In the introductory text and in paragraphs (c) and (d), "organization" and "organization's" are changed to "HMO or CMP" and "HMO's or CMP's", respectively.

b. In paragraph (c), "members" is changed to "enrollees".

c. In paragraph (d), "§ 417.107" is changed to "§ 417.126(a)", and the last sentence is removed.

§ 417.492 [Amended]

34. In § 417.492, the following changes are made:

a. Throughout the section, "organization" and "organization's" are changed to "HMO or CMP" and "HMO's or CMP's", respectively (9 times).

b. In paragraph (b)(4), "§§ 417.640 through 417.682" is revised to read "subpart R of this part".

§ 417.494 [Amended]

35. In § 417.494, the following changes are made:

a. The term "organization" and its plural and possessive forms are changed to "HMOs or CMPs", and "HMO's or CMP's", respectively.

b. In paragraph (b)(1)(iv), "subpart" is changed to "part".

c. In paragraph (b)(2), "§§ 417.640 through 417.682" is revised to read "subpart R of this part".

§ 417.520 [Amended]

36. In §§ 417.520, the following changes are made:

a. Throughout the section, "organization" is changed to "HMO or CMP" (6 times).

b. In paragraph (b)(2), "§§ 417.472 through 417.488" is revised to read "subpart L of this part".

§ 417.522 [Amended]

37. In § 417.522, the following changes are made:

a. The terms "organization" and "eligible organization" are changed to "HMO or CMP" (3 times).

b. In paragraph (a)(3)(iii), "this subpart" is changed to "this part".

§ 417.523 [Amended]

38. In § 417.523, the following changes are made:

a. In the heading and throughout the section, "organization" and "eligible organization" are changed to "HMO or CMP" and "organization's" is changed to "HMO's or CMP's".

b. In paragraph (b)(2), "this subpart." is changed to "subpart L of this part.".

c. In paragraph (c), "applicable" is inserted immediately before "requirements" and "§§ 417.410

through 417.418" is revised to read "subpart J of this part.".

§ 417.526 [Amended]

39. In § 417.526, the following changes are made:

a. "Sections 417.530 through 417.576 set forth" is revised to read "Subpart O of this part sets forth".

b. The term "eligible organization" is changed to "HMO or CMP" (twice).

c. "§§ 417.580 through 417.598 describe" is revised to read "Subpart P of this part describes".

§ 417.528 [Amended]

40. In § 417.528, the following changes are made:

a. In the heading and throughout the section, "payor" is changed to "payer" (6 times), and "eligible organization" and "organization" are changed to "HMO or CMP" (7 times).

b. In paragraph (a), "where Medicare is not the primary payor" is revised to read "for which Medicare is not the primary payer".

§ 417.530 [Amended]

41. In § 417.530, the following changes are made:

a. "Sections 417.530 through 417.576 set forth" is revised to read "This subpart sets forth".

b. Throughout the section, "organization" is changed to "HMO or CMP" (3 times).

§ 417.536 [Amended]

42. In § 417.536, the following changes are made:

a. In the heading, "the organizations" is changed to "HMOs and CMPs".

b. In paragraph (a), the phrase "are applicable to the organization's costs when incurred by an organization or by providers of services and other facilities owned or operated by the organization, or related to the organization" is revised to read "are applicable to the costs incurred by an HMO or CMP or by providers and other facilities owned or operated by the HMO or CMP or related to it".

c. Throughout the section, except in the heading to paragraph (k), "organization" and "organization's" are changed to "HMO or CMP" and "HMO's or CMP's", respectively (17 times).

d. In paragraph (f)(3), "enrollee or" is revised to read "enrollee of".

e. In paragraph (g), "§ 405.420" is changed to "§ 413.80" and "deductions for revenue" is revised to read "deductions from revenue".

f. In the heading of paragraph (k), "organizations" is changed to "entities".

g. In paragraph (m)(1), "§§ 405.542, 405.544, and 413.170" is revised to read "§§ 413.170".

h. In paragraph (m)(3), "§ 413.110" is revised to read "§§ 405.517 and 410.29".

§ 417.548 [Amended]

43. In § 417.548, the following changes are made:

a. Throughout the section, "organization" and "organization's" are changed to "HMO or CMP" and "HMO's or CMP's", respectively (12 times).

b. In paragraph (a), the phrase "unless, upon the organization's petition to HCFA, the organization can demonstrate" is revised to read "unless the HMO or CMP petitions HCFA and demonstrates".

§ 417.550 [Amended]

44. In § 417.550, the following changes are made:

a. In paragraph (a), "Medicare reimburses" is revised to read "HCFA reimburses".

b. Throughout the section, "organization" and "organization's" are changed to "HMO or CMP" and "HMO's or CMP's", respectively (5 times).

c. In paragraph (d)(2), "membership" is changed to "enrollment".

§ 417.580 [Amended]

45. In § 417.580, the following changes are made:

a. In paragraph (a), "Sections 417.582 through 417.598 implement" is revised to read "This subpart implements".

b. In paragraph (b) introductory text, "Sections 417.582 through 417.598 set forth—" is revised to read "This subpart sets forth—"

c. In paragraphs (a) and (b), "organization" and "organization's" are changed to "HMO or CMP" and "HMO's or CMP's", respectively.

§ 417.582 [Amended]

46. In § 417.582, the following changes are made:

a. The introductory text is revised to read: "As used in this subpart—".

b. The term "organization" is changed to "HMO or CMP" and "organization's" is changed to "HMO's or CMP's".

§ 417.592 [Amended]

47. In § 417.592, the following changes are made:

a. In paragraph (a), the first "organization's" is changed to "HMO's or CMP's", the second "organization's" is changed to "its", and "organization" is changed to "HMO or CMP".

b. Paragraph (b)(1) is revised to read:

§ 417.592 Determination of required additional benefits.

* * * * *

(b) * * *

(1) A reduction in the premium or other charges imposed by the HMO or CMP in the form of deductibles and coinsurance; or.

* * * * *

c. In paragraph (d)(2)(i), "the organization has elected" is changed to "that it has elected".

d. Throughout the rest of the section, "organization" is changed to "HMO or CMP" and "organization's" is changed to "HMO's or CMP's".

§ 417.594 [Amended]

48. In § 417.594, the following changes are made:

a. Throughout the section, "organization" and "eligible organization" are revised to read "HMO or CMP" (26 times), "organization's" is changed to "HMO's or CMP's" (9 times), and "payor" and "payors" are changed to "payer" (2 times) and "payers" respectively.

b. In paragraph (a)(1), "membership" is changed to "enrollment".

c. In paragraph (b)(1)(ii), "purchase membership" is changed to "enroll".

d. In paragraph (c)(2), the "(i)" designation and paragraph (c)(2)(ii) are removed.

§ 417.598 [Amended]

49. In § 417.598, "organization" is changed to "HMO or CMP" (3 times), and "assure" is changed to "ensure".

§ 417.600 [Amended]

50. In § 417.600, "Sections 417.600 through 417.638 establish" is revised to read "This subpart establishes", and "organizations" is changed to "HMOs or CMPs".

§ 417.602 [Amended]

51. In § 417.602, "§§ 417.604 through 417.638" is revised to read "this subpart".

§ 417.604 [Amended]

52. In § 417.604, the following changes are made:

a. The phrase "§§ 417.604 through 417.638" is revised to read "this subpart" (3 times).

b. The term "organization" is changed to "HMO or CMP" (7 times), and "organization's" is changed to "HMO's or CMP's".

c. In paragraph (b)(1), "these sections" is revised to read "this subpart".

§ 417.640 [Amended]

53. In § 417.640, "Sections 417.640 through 417.694 establish" is revised to read "This subpart establishes", and the terms "eligible organization" and "organization" are changed to "HMO or CMP" (8 times).

§ 417.642 [Amended]

54. In § 417.642, "§§ 417.640 through 417.694" is revised to read "this

subpart", and "organization" is changed to "HMO or CMP".

55. In § 417.670, paragraph (c) is revised to read:

§ 417.670 Time and place of hearing.

* * * * *

(c) The hearing officer will give the parties reasonable notice of any change in time or place or of adjournment.

§ 417.800 [Amended]

56. In § 417.800, the following changes are made:

a. In paragraph (b)(1)(iii), "Public Health Service Act" is revised to read "PHS Act".

b. In paragraph (c)(1), the phrase "§§ 417.530 through 417.576" is revised to read "subpart O of this part".

§ 417.801 [Amended]

57. In the § 417.801, the following changes are made:

a. In paragraph (a)(2), "this subpart D" is revised to read "this subpart U".

b. In paragraph (b)(2), the phrase "as defined in § 417.800" is removed.

c. In paragraph (d)(1)(iii), "§§ 417.520 through 417.523" is revised to read "subpart M of this part".

§ 417.802 [Amended]

58. In § 417.802, paragraph (a), "§§ 417.530 through 417.550" is revised to read "subpart O of this part".

§ 417.806 [Amended]

59. In paragraph (a) "will" is removed.

§ 417.810 [Amended]

60. In paragraph (c)(2) "subchapter" is changed to "chapter".

§ 417.912 [Amended]

61. In § 417.912, the following changes are made:

a. Throughout the section, "Public Health Service Act" is revised to read "PHS Act" (8 times), "member" is changed to "enrollee" (once), and "members" and "enrolled members" are changed to "enrollees" (5 times).

b. In paragraph (b)(1), the last two words are corrected to read "an HMO".

c. In paragraph (b)(3), "this subpart" is revised to read "subpart B of this part" (the first time it appears) and "subpart C of this part" (the second time it appears).

d. In paragraph (b)(4), "organization" is changed to "HMO" (two times).

e. In paragraphs (c), (d) introductory text, and (g), "which" is changed to "that".

f. In paragraphs (d) introductory text, (f), (g), and (h), "shall" is changed to "must" (6 times).

g. In paragraph (h), in the second sentence, "of this section" is inserted after "paragraph (e)".

§ 417.913 [Amended]

62. In § 417.913, the following changes are made:

a. Throughout the section, "shall" is changed to "must" (5 times), "which" is changed to "that" (3 times), and "Public Health Service Act" is revised to read "PHS Act" (2 times).

b. In paragraph (b)(2), the phrase "under §§ 417.120 through 417.126, and 417.130 through 417.137 which is consistent" is revised to read "under this subpart, if the application is consistent".

§ 417.917 [Amended]

63. In the introductory text, "§§ 417.140 through 417.154 of this subpart" is revised to read "subpart D of this part".

§ 417.918 [Amended]

64. In paragraph (a), "§§ 417.120 through 417.126" is revised to read "§§ 417.920 through 417.926" (2 times).

§ 417.921 [Amended]

65. In § 417.921, the following changes are made:

a. Throughout the section, "which" is changed to "that" (5 times), and "membership" is changed to "enrollment" (2 times).

b. In the introductory text, "§§ 417.120 through 417.126" is revised to read "§§ 417.920 through 417.926" (2 times).

c. In paragraph (b), "§§ 417.140 through 417.144 of this subpart" is revised to read "subpart D of this part".

§ 417.922 [Amended]

66. In § 417.922 the following changes are made:

a. Throughout the section, except in paragraphs (f)(1) and (f)(5), "which" is changed to "that" (4 times).

b. In paragraph (f)(1), "shall" is changed to "must" and in paragraphs (f) introductory text and (f)(2) "Public Health Service Act" is revised to read "PHS Act".

c. In paragraphs (f)(5)(iii)(B) and (h)(1), "membership" is changed to "enrollment" (3 times), and in paragraph (h)(3) "members" is changed to "enrollees".

d. In paragraph (g), "§§ 417.100 through 417.109 of this subpart" is revised to read "subparts B and C of this part and §§ 417.168 and 417.169.".

e. In paragraph (h)(4), "§ 417.111(c)" is changed to § 417.911(c).

§ 417.923 [Amended]

67. In § 417.923, the following changes are made:

a. In paragraph (a), "§ 417.122(a), (b), (c), (d), and (e)" is revised to read "paragraphs (a) through (e) of § 417.922".

b. In paragraph (b), "Public Health Service Act" is revised to read "PHS Act", and in paragraph (b)(1), "§§ 417.100 through 417.109 of this subpart" is revised to read "subparts B and C of this part and §§ 417.168 and 417.169".

c. In paragraphs (d) introductory text and (e), "which" is changed to "that".

d. In paragraph (e), "§§ 417.100 through 417.109 of this subpart" is revised to read "subparts B and C of this part and §§ 417.168 and 417.169".

e. In paragraphs (f)(1) and (4), "membership" is changed to "enrollment", and in paragraph (f)(4) "§ 417.111" is changed to "§ 417.911".

§ 417.924 [Amended]

68. In § 417.924, the following changes are made:

a. In paragraphs (a)(1) and (b)(1), "Public Health Service Act" is revised to read "PHS Act" (3 times).

b. In paragraph (a)(2), "§§ 417.120 through 417.126" is revised to read "§§ 417.920 through 417.926; "which" is changed to "that"; "members", the first time it appears is changed to "enrollees"; "membership" is changed to "enrollment"; and "shall" is changed to "must".

c. In paragraph (a)(3), "shall" is changed to "may" and "§ 417.122" is changed to "§ 417.922".

d. In paragraph (b)(3), "§§ 417.120 through 417.126" is revised to read "§§ 417.920 through 417.926" (2 times), "members" is changed to "enrollees" the first time it appears, and "membership" is changed to "enrollment".

e. In paragraph (b)(4), "shall" is changed to "may", "§ 417.123(b)" is changed to "§ 417.923(b)", and "§ 417.123(e)" is changed to "§ 417.923(e)".

§ 417.925 [Amended]

69. In § 417.925, the following changes are made:

a. The section heading is revised to read "Evaluation and award: Planning and initial development.".

b. In paragraph (a) introductory text, "which" is changed to "that", "§ 417.107(c)" is changed to "§ 417.124(b)", "Public Health Service Act" is revised to read "PHS Act", and "§§ 417.120 through 417.126" is revised to read "§§ 417.920 through 417.926".

c. In paragraph (a)(1), "§ 417.122 or § 417.123" is revised to read "§ 417.922 or § 417.923".

d. In paragraph (b), "§§ 417.120 through 417.126" is revised to read

"§§ 417 920 through 417.926", "which" is changed to "that", and "members" the first time it appears is changed to "enrollees".

§ 417.926 [Amended]

70. In § 417 926, the following changes are made:

a. In paragraph (a), "§§ 417.120 through 417.126" is revised to read "§§ 417 920 through 417.926".

b. In paragraphs (a) and (c), "shall" is changed to "will", and "which" is changed to "that".

§ 417.931 [Amended]

71. In § 417 931, the following changes are made:

a. In paragraph (a) introductory text, "which" is changed to "that".

b. In paragraph (b), "members" is changed to "enrollees".

§ 417.932 [Amended]

72. In § 417.932, the following changes are made:

a. The section heading is revised to read "Eligible applicants and projects: Initial costs of operation."

b. In paragraph (a), "§§ 417.130 through 417.137" is revised to read "§§ 417 930 through 417 937" (2 times).

c. In paragraph (b), "pursuant to" is changed to "under" (2 times) "§§ 417.110 through 417.119 and §§ 417.130 through 417.137" is revised to read "this subpart", "membership" is changed to "enrollment", and "§ 417.111(c)" is changed to "§ 417.911(c)".

§ 417.933 [Amended]

73. In § 417.933, the section heading is revised to read "Project elements for initial costs of operation.".

§ 417.935 [Amended]

74. In § 417 935, the section heading is revised to read "Evaluation and award: Initial costs of operation", and in the introductory text "Public Health Service Act" is revised to read "PHS Act".

§ 417.936 [Amended]

75. In § 417 936, the following changes are made:

a. Throughout the section, "Public Health Service Act" is revised to read "PHS Act" (6 times).

b. In paragraph (a), "shall" is changed to "may".

c. In paragraph (b), "shall" is changed to "does".

d. In paragraph (c), "§§ 417.130 through 417.137" is revised to read "§§ 417 930 through 417 937", and 'which" is changed to "that".

§ 417.937 [Amended]

76. In § 417 937, the following changes are made:

a. In paragraph (a), "§§ 417.130 through 417.137" is revised to read "§§ 417 930 through 417 937", and "shall" is changed to "will".

b. In paragraph (b), "shall" is changed to "will" (3 times), and "where" is changed to "if".

c. In paragraph (c), "shall" is changed to "will", and the phrase "sufficient to amortize" is revised to read "sufficient in amount to amortize".

M. Nomenclature Changes

1. In the following locations, the terms "member", "members", "member's", and "a member's" are changed to read "enrollee", "enrollees", "enrollee's", and "an enrollee's", respectively:

Sec.
417.102 (a) and (b).
417.103(a)(3)(ii)(C), (c)(2), (e)(1), (e)(2), and (e)(3).
417.104(a)(4) (5 times), (b)(1) (2 times), (b)(2)(i), (b)(4)(ii), and (c)(2).
417.105(a) and (b).
417.478(c).

2. In the following locations, the term "membership" is changed to "enrollment";

Sec.
417.104(a)(4)(ii).
417.158 (2 times).
417.540 heading and (a) and (b).

3. In the following locations, the term "eligible organization", in its singular, plural, and possessive forms, is changed to "HMO or CMP", "HMOs or CMPs" and "HMO's or CMP's", respectively; and the term "organization" in its singular, plural, and possessive forms is changed to "HMO or CMP", "HMOs or CMPs" and "HMO's or CMP's, respectively:

Sec.
417.412(b).
417.413(a), (b) heading, (b)(1), (b)(2), (b)(3), (b)(4) (2 times), (c) (2 times), (d)(1), (d)(2) (5 times), (d)(3) (3 times), (d)(4), (d)(5) (3 times), (d)(6) (4 times), (d)(7) (2 times), (e)(1), and (e)(2) (2 times).
417.416(a)(2 times), (c) (4 times), (d)(1), (d)(2), (e)(1), and (e)(2).
417.428(a) introductory text, (a)(1), (a)(4) (thrice), (b) introductory text, (b)(1), (b)(2) (thrice), (b)(3) (2 times), (b)(5) (2 times), and (c) (2 times).
417 430(a)(1), (a)(2), (b) introductory text, (b)(3), (b)(4)(i), (b)(4)(ii), (b)(6) introductory text (2 times), (b)(6)(i), (b)(6)(ii), (b)(7) and (b)(8)
417 432(a) (2 times), (b), (c), (e) (2 times).
417.434.
417 442 heading, (a) (thrice), (b) introductory text, and (b)(2).
417 454(a) and (b).
417.458 introductory text, (a), (b), and (c).
417.474(b).
417.480 heading, introductory text (2 times), (b)(1), and (b)(7).
417.481 heading and introductory text (2 times).
417.482 introductory text, (b), (c), (e), (f)(1) and (f)(2).
417 484(a) introductory text, (a)(1), (a)(3), and (b).
417 486 introductory text.
417.488 introductory text.
417 490 (2 times).
417.494 paragraphs (a)(1), (a)(2), (a)(3), (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(1)(iv) (2 times), (b)(2) (2 times), (b)(3), (b)(4), (c) introductory text (2 times), (c)(1), (c)(2) (3 times), and (c)(3).
417.521(c)(1) (2 times) and (c)(2) (2 times).
417.524 heading, (a) (2 times) and (b) (3 times).
417.531(a), (b) introductory text and (b)(1).
417.532(a)(1), (a)(1)(iii), (a)(2), (a)(3) (2 times), (a)(4) (4 times), (b) heading, (b)(3) (4 times), (c) introductory text (2 times), (c)(2), (e) heading and introductory text, (e)(1), (f) (3 times), (g) (3 times), and (h) (3 times).
417.533 introductory text and (a).
417 534(a) (3 times) and (b).
417.538(a), (b), (c), and (d).
417.544 heading and (a).
417.546(a), (b)(1) (4 times) and (b)(2) (4 times).
417 552(a).
417 554 (3 times).
417.556 heading, (a), (b), (c) (2 times), and (d) (2 times).
417.558 heading, (a), (b) heading, (b)(1), and (b)(2) (2 times).
417.560(a) introductory text (5 times), (b) (3 times), (c) (2 times), (d) introductory text, (d)(1), and (d)(2) (3 times).
417.562(a), (b)(3), (c) introductory text, and (d).
417 564(a) (2 times), (b) introductory text, (b)(1) (2 times) and (b)(2) (2 times).
417.566(b)(1) and (b)(2).
417 568(a)(1) (2 times), (b)(1), (c) (3 times), (d) (3 times), and (e).
417.570(a)(1) (2 times), (b) (2 times), (c) introductory text, (c)(3), and (d).
417.572(a), (b) introductory text, (b)(2), (c)(1), and (c)(2).
417.574(a) (3 times) and (b).
417.576(a) (2 times), (b)(1) (2 times), (b)(2)(i) (2 times), (b)(2)(ii), (b)(3), (c)(1) (2 times), (c)(2) (10 times), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2) (3 times), and (e)(3).
417.584 heading, introductory text (2 times), (a) (2 times), (b)(2) (2 times), and (d) (3 times).
417.585(a), (b) introductory text, (b)(1), and (c).

417.586 section heading, (a), heading, (a)(1), (a)(2) (2 times), (a)(3), (b)(1) (2 times), (c) heading, (c)(1) (2 times), (d) (2 times), (e) introductory text (2 times), (e)(1), and (e)(2).

417.588(b) (2 times), (c)(1) (2 times) (c)(2) (2 times), and (c)(3).

417.596(a) (2 times), (b) (2 times), (c)(1), (c)(2) (3 times), (c)(3) and (d)(2).

417.608(a).

417.610(b)

417.616(a)(1), (c)(1), and (c)(2).

417.618.

417.620(b) introductory text (2 times), (b)(1) (2 times), and (b)(2) (3 times).

417.622(a).

417.632(c) (3 times).

417.634.

417.636(a) (2 times) and (b).

417.638.

417.644 (a), (b)(2) and (c).

417.656(a).

417.660(b) and (c).

417.662 (a).

417.664(a) and (b)(2).

4. Throughout part 417, "Public Health Service Act" is revised to read "PHS Act".

5. Throughout part 417, except in subpart V, "the Secretary" is changed to "HCFA", and the related pronouns are conformed.

6. In the following locations, "shall" is changed to "must":

Sec.

417.102(b) (2 times).

417.103(a)(1), (a)(3) (2 times), (b) introductory text, (d), and (e) introductory text.

417.104(a) introductory text, (b)(1) and (b)(2) (the second time the term appears), (d) and (e) introductory text.

417.105(b), (the first time the term appears).

417.156 introductory text (3 times) and paragraphs (a), (b) (3 times), and (c).

417.158.

417.915(a) (2 times).

417 919(a) and (b).

417.934 (2 times).

7. In the following locations, "shall" is changed to "will".

Sec.

417.104(b)(1) (the first time the term appears), (b)(2), and (b)(4).

417.105(b), (the second time the term appears).

8. In the following locations, "which" is changed to "that":

Sec.

417.102(a).

417.103(a)(1), (a)(3) (2 times).

417.104(a) introductory text, and paragraphs (b)(1) (3 times), (b)(2), (c)(1), and (d).

417.158 (3 times).

417 915(c).

417 919(a) (2 times) and (b).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 2, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: April 2, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–16437 Filed 7–14–93; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6989

[AK–932–4210–06; AA–51033]

Revocation of Executive Order No. 6546, Dated January 2, 1934; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in its entirety an Executive order as it affects approximately 4.94 acres of public land withdrawn and reserved for the use of the Territory of Alaska for burial purposes. The site is known as the Sitka Pioneer Cemetery. The protection of a withdrawal is no longer needed for this land. The land continues to be subject to the terms and conditions of an overlapping withdrawal and remains closed to all forms of appropriation and disposition, except for location for metalliferous minerals and selection by the State of Alaska.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S C. 1714 (1988), and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. Executive Order No. 6546, dated January 2, 1934, which withdrew public land for use as a burial site at the Sitka Pioneer Cemetery, is hereby revoked as it affects the following described lands:

Copper River Meridian

T. 55 S., R. 63 E.,

Beginning at corner No. 1, from which witness corner to corner No. 2, U S. Survey No. 1804, Alaska, bears S. 42°55′ E., 435.0 ft.; in approximate latitude 57°03′ N., longitude 135°20′ W.; thence from said point of beginning N. 67°35′ E., 263.6 ft. to corner No. 2; thence N. 0°09′ E., 279.9 ft. to corner No. 3; thence N. 59°07′ W., 383.3 ft. to corner No. 4; thence S. 82°10′ W., 324.7 ft. to corner No. 5; thence S. 37°19′ E., 670.0 ft. to corner No. 1, the place of beginning.

The area described contains approximately 4 94 acres.

2. Subject to the terms and conditions of Public Land Order No. 5186, the land described above remains closed to all forms of appropriation under the public land laws, including location and entry under the mining and mineral leasing laws, except for location for metalliferous minerals, 30 U.S.C. Ch. 2 (1988), and selection by the State of Alaska.

3. The State of Alaska application for selection made under section 6(a) of the Alaska Statehood Act and section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. This selection will be adjudicated in accordance with 43 CFR 2627 and the land will remain closed to metalliferous mining until a further opening order is published.

Dated: July 6, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–16717 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–JA–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM)

showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–2766.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the Federal Register.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Mission Viejo (city), Orange County (FEMA Document No. 7061)	
Trabuco Creek:	
Approximately 4,200 feet upstream of Viejo Road	*239
Approximately 3,000 feet upstream of unnamed road	*255
Maps are available for review at City Hall, 26522 La Alameda, Suite 190, Mission Viejo, California.	
Orange (city), Orange County (FEMA Docket No. 7061)	
Alameda Storm Channel:	
Approximately 1,500 feet downstream of Hewes Street	None
At Hewes Street	None
At Linda Vista Street	None
At Jamestown Way	None
Approximately 500 feet upstream of Jamestown Way	None
Handy Creek:	
Approximately 1,900 feet downstream of Orange Park Boulevard	*401
Maps are available for review at City Hall, 300 East Chapman Avenue, Orange, California.	
Orange County (unincorporated areas) (FEMA Docket No. 7061)	
Aliso Creek:	
Just downstream of El Toro Road	*614
Approximately 600 feet upstream of El Toro Road	*625
Approximately 1,000 feet downstream of Normandale Road	*670
Just upstream of Normandale Road	*684
Approximately 6,600 feet upstream of Normandale Road	*784
Handy Creek:	
Approximately 1,700 feet downstream of Orange Park Boulevard	*401
Just downstream of Orange Park Boulevard	*431
Just downstream of Meads Avenue	*446
At Amapola Avenue	*472
Approximately 300 feet upstream of Amapola Avenue	*474
San Juan Creek:	
Approximately 1,920 feet downstream of Ortega Highway	*143
Just downstream of Ortega Highway	*160
Approximately 440 feet upstream of Ortega Highway	*171
Serrano Creek:	
Just upstream of Bake Parkway	*363
Just upstream of Trabuco Road	*438
Just upstream of Dimension Drive (channel/overbank)	*652/659
Approximately 370 feet downstream of Access Road (channel/overbank)	*676/680
Approximately 900 feet upstream of Access Road in the north overbank	#2
Approximately 1,300 feet downstream of Lake Forest Drive in the north overbank	#1

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 800 feet upstream of Lake Forest Drive in the north overbank	#2
Approximately 3,100 feet upstream of Lake Forest Drive	*791
Trabuco Creek:	
Approximately 1,000 feet upstream of Unnamed Road	*251
Approximately 3,000 feet upstream of the City of Mission Viejo corporate limits	*275
Approximately 3,050 feet upstream of the City of Mission Viejo corporate limits	None
Approximately 7,750 feet upstream of the City of Mission Viejo corporate limits	None
Maps are available for review at 400 Civic Center Drive, Building 12, Room 314, Santa Ana, California.	
Richmond (city), Contra Costa County (FEMA Docket No. 7063)	
Rheem Creek:	
At the confluence with San Pablo Bay	*6
Just upstream of Southern Pacific Railroad	*17
At Atchison, Topeka and Santa Fe Railroad Bridge	*21
Maps are available for review at the Building Regulations Department, 2600 Barrett Avenue, Richmond, California.	
San Juan Capistrano (city), Orange County (FEMA Docket No. 7061)	
San Juan Creek:	
Just downstream of the Atchison, Topeka and Santa Fe Railroad	*72
Just upstream of San Diego Freeway	*80
Just downstream of the confluence of Horno Creek	*88
Approximately 1,540 feet upstream of La Novia Avenue (streamside/landside of levee)	*112/110
Approximately 7,700 feet upstream of La Novia Avenue	*142
Trabuco Creek:	
Just downstream of the Atchison, Topeka and Santa Fe Railroad	*158
At Camino Capistrano	*189
At Viejo Road	*196
Approximately 4,050 feet upstream of Viejo Road	*238
Maps are available for review at City Hall, 32400 Paseo Adelanto, San Juan Capistrano, California.	
San Pablo (city), Contra Costa County (FEMA Docket No. 7063)	
Rheem Creek:	
Just upstream of Giant Highway	*24
Just upstream of 12th Street	*28
Along Giant Road from Standard Oil Tank to Rheem Creek:	
Rheem Creek Bridge at Giant Road	*26
At Miner Avenue	*28
Maps are available for review at the Building Department, Number One Alvarado Square, San Pablo, California.	
COLORADO	
Arapahoe County (unincorporated areas) (FEMA Docket No. 7061)	
Big Dry Creek:	
Approximately 2,000 feet downstream of East Dry Creek Road	*5,570
Approximately 70 feet upstream of East Dry Creek Road	*5,590
Just upstream of South Colorado Boulevard	*5,612
Approximately 400 feet upstream of South Colorado Boulevard	*5,620
Goldsmith Gulch:	
Approximately 750 feet downstream of East Orchard Road	*5,643
Just upstream of East Orchard Road	*5,670
At East Maplewood Avenue	*5,696
Just downstream of East Arapahoe Road	*5,769
Piney Creek:	
Approximately 650 feet upstream of the confluence with Cherry Creek	*5,627
Just upstream of South Parker Road	*5,643
At South Ouray Street extended	*5,680
Approximately 13,700 feet upstream of South Parker Road	*5,733
Willow Creek downstream of Englewood Dam:	
Just downstream of South Holly Street	*5,538
Just upstream of East Arapahoe Road	*5,542
Approximately 2,260 feet upstream of East Arapahoe Road	*5,555
Willow Creek upstream of Englewood Dam:	
Approximately 250 feet downstream of East Dry Creek Road	*5,603
Approximately 200 feet upstream of East Dry Creek Road	*5,612
Just upstream of South Quebec Street	*5,644
Just upstream of East Mineral Drive	*5,670
Just downstream of County Line Road (State Highway 470)	*5,717
Maps are available for review at the Department of Engineering and Planning, 5434 South Prince Street, Littleton, Colorado.	
Larimer County (unincorporated areas) (FEMA Docket No. 7061)	
Boxelder Creek:	
Approximately 3,600 feet downstream of State Highway 14	*4,916
Just upstream of Vine Drive	*4,963
At County Road 50	*4,984
At County Road 52	*5,018
Just upstream of County Road 54	*5,049
Just upstream of County Road 56	*5,082
Approximately 50 feet downstream of County Road 58	*5,110
Just upstream of County Road 60	*5,148
Approximately 50 feet downstream of County Road 62	*5,180
Approximately 3,200 feet upstream of County Road 64	*5,226
Boxelder Creek Overflow Channel:	
Approximately 1,800 feet downstream of State Highway 14, at the convergence with Boxelder Creek	*4,917
Approximately 1,700 feet upstream of Vine Drive	*4,967
Just downstream of County Road 50	*4,995
At County Road 52	*5,020
Approximately 3,000 feet upstream of County Road 52	*5,033
Boxelder Creek Left Overbank Divided Flow At Indian Creek:	
At the convergence with Boxelder Creek	*5,115
Approximately 3,600 feet upstream of the convergence with Boxelder Creek	*5,130
Approximately 6,000 feet upstream of the convergence with Boxelder Creek	*5,139

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps are available for review at Larimer County Engineering Department, 218 West Mountain Avenue, Fort Collins, Colorado.	
Larimer County (unincorporated areas) (FEMA Docket No. 7061)	
Cache La Poudre River:	
At Larimer-Weld County Line Road	*4,788
Just upstream of Larimer County Road 32 East	*4,800
At Greeley Canal #2 Diversion Structure	*4,817
Just upstream of Harmony Road	*4,842
At Horsetooth Road	*4,855
Cache La Poudre River—Interstate Highway 25 Divided Flow:	
At the confluence with the Cache La Poudre River	*4,818
At Larimer County Road 36 East	*4,833
Approximately 2,250 feet upstream of Harmony Road, at the divergence from the Cache La Poudre River	*4,850
Maps are available for review at the Larimer County Engineering Department, 218 West Mountain Avenue, Fort Collins, Colorado.	
NEVADA	
Reno (city), Washoe County (FEMA Docket No. 7061)	
Dry Creek/Boynton Slough:	
Just upstream of East McCarran Boulevard	*4,393
Just downstream of Peckham Lane	*4,414
Approximately 1,500 feet downstream of South Virginia Street	*4,452
*Approximately 600 feet upstream of Huffacker Lane	*4,490
At Panorama Drive	*4,513
Maps are available for review at the Community Development Engineering Department, 450 Sinclair Street, Third Floor, Reno, Nevada.	
Washoe County (unincorporated areas) (FEMA Docket No. 7061)	
Dry Creek/Boynton Slought:	
Just upstream of East McCarran Boulevard	*4,393
Approximately 500 feet upstream of South McCarran Boulevard	*4,425
Approximately 350 feet downstream of South Virginia Street	*4,460
Approximately 100 feet upstream of Dieringer Drive	*4,536
Approximately 1,400 feet upstream of Holcomb Lane	*4,649
Truckee River:	
Approximately 1,250 feet upstream of Mustang Ranch Road No. 2	*4,326
Approximately 4,500 feet upstream of Mustang Ranch Road No. 1	*4,340
Approximately 1,800 feet upstream of State Highway 45	*4,361
Maps are available for review at the Washoe County Department of Public Works, 1001 East 9th Street, Reno, Nevada.	
NEW YORK	
Yorktown (town), Westchester County (FEMA Docket No. 7061)	
Shrub Oak Brook:	
Approximately 0.3 mile upstream of Barger Street	*423
Approximately 0.2 mile upstream of U.S. Route 6	*425
Maps available for inspection at the Yorktown Town Hall, 363 Under Hill Avenue, Yorktown Heights, New York.	
NORTH DAKOTA	
Grafton (city), Walsh County (FEMA Docket No. 7063)	
Park River:	
At Field Road extended, approximately 6,660 feet downstream of Burgamott Avenue	*824
At Burgamott Avenue	*824
Just downstream of Hill Avenue extended	*830
Approximately 8,020 feet upstream of Kittson Avenue	*831
Maps are available for review at the Department of Public Works, City of Grafton, 5 East Fourth Street, Rolla, North Dakota.	
OHIO	
Arcanum, Village (Darke County) (FEMA Docket No. 7061)	
Painter Creek:	
At downstream corporate limits	*1,042
Approximately 1,800 feet upstream of upstream corporate limits	*1,049
Maps available for inspection at the Arcanum Village Hall, 104 West South Street, Arcanum, Ohio.	
PENNSYLVANIA	
Bensalem (township), Bucks County (FEMA Docket No. 7057)	
Neshaminy Creek:	
Approximately 600 feet downstream of Hulmeville Road	*30
Approximately 0.5 mile upstream of Hulmeville Road	*35
Maps available for inspection at the Code Enforcement Office, 2400 Byberry Road, Bensalem, Pennsylvania.	
Hulmeville (borough), Bucks County (FEMA Docket No. 7057)	
Neshaminy Creek:	
Approximately 1,100 feet downstream of Hulmeville Road	*29
At Hulmeville corporate limits	*34
Maps available for inspection at the Hulmeville Borough Hall, 517 Lincoln Avenue, Hulmeville, Pennsylvania.	
SOUTH DAKOTA	
Fort Pierre (city), Stanley County (FEMA Docket No. 7061)	
Bad River:	
Approximately 200 feet above mouth	*1,431
At U.S. Highway 83	*1,439
Just downstream of the second crossing of Chicago & Northwestern Railway, from the mouth going upstream	*1,445
Approximately 800 feet upstream of Chicago & Northwestern Railway	*1,447
Maps are available for review at City Hall, City of Fort Pierre, 8 East Second Avenue, Fort Pierre, South Dakota.	
TEXAS	
Wichita Falls, City (Wichita County) (FEMA Docket No. 7055)	
Wichita River:	
Approximately 1.9 miles downstream of River Road	*938
Approximately 1.5 miles upstream of confluence of Plum Creek	*954

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Holliday Creek:	
At the confluence with Wichita River	*939
At upstream corporate limits	*982
Holliday Creek Tributary A:	
At confluence with Holliday Creek	*939
Approximately 150 feet downstream of north access road and Central Freeway	*974
Lake Wichita Tributary:	
Approximately .4 mile upstream of confluence with Lake Wichita	*986
Approximately 600 feet upstream of Briargrove Drive	*1,012
McGrath Creek:	
At the confluence with Holliday Creek	*944
Approximately 100 feet downstream of Hughes Drive	*985
McGrath Creek Tributary A (previously called McGrath Creek Tributary):	
At confluence with McGrath Creek	*969
Approximately 0.19 mile upstream of McNeil Avenue	*996
McGrath Creek Tributary B:	
Confluence with McGrath Creek Tributary A	*973
Approximately 0.15 mile upstream of Garfield Street	*987
East Plum Creek:	
Confluence with Wichita River	*941
Approximately 300 feet upstream of Fort Worth & Denver Railway bridge	*952
Plum Creek:	
Approximately .4 mile upstream of confluence with Wichita River	*952
Approximately 0.27 mile upstream of Central Freeway	*1,024
Brenda Hursh Creek:	
At confluence with Holliday Creek	*941
Approximately 650 feet upstream of Dunbarton Road	*969
Brenda Hursh Channel:	
At the confluence with Brenda Hursh Creek	*956
Approximately 100 feet downstream of Weeks Street	*956
Holliday Creek Old Channel:	
At the confluence with Holliday Creek	*961
Maps available for inspection at the Planning Department, room 401, Wichita Falls City Hall, 1300 7th Street, Wichita Falls, Texas.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
VIRGINIA	
Bristol (city), Independent City (FEMA Docket No. 7063)	
Little Creek:	
Upstream side of State Street	*1,670
0.85 mile upstream of Church Street	*1,727
Maps available for inspection at the Department of Community Development and Planning, 1201 Oakview Avenue, Bristol, Virginia.	
WASHINGTON	
Wenatchee (city), Chelan County (FEMA Docket No. 7061)	
Dry Gulch:	
At the intersection of Oak Street and Splett Street	*#1
500 feet south along Seneca Avenue from its intersection with Crawford Street	*#1
Maps are available for review at the City of Wenatchee, Department of Planning and Development, 25 North Worthen, Wenatchee, Washington.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 7, 1993.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 93–16768 Filed 7–14–93; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–129; RM–7084, RM–7290, RM–7413]

Radio Broadcasting Services; Columbia and Dothan, AL; Graceville, Santa Rosa Beach and Springfield, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 273C3 for Channel 273A at Dothan, Alabama, and modifies the license for Station WESP (FM) accordingly; and allots Channel 221A to Columbia, Alabama, as that community's first local FM service, at the request of Broadcast Associates, Inc., and Columbia Broadcasting Group, respectively. See 55 FR 10789, March 23, 1990. Channel 273C3 can be allotted to Dothan in compliance with the Commission's minimum distance separation requirements with a site restriction 5.9 kilometers (3.7 miles) east in order to avoid a short-spacing to Station WAMI (FM), Channel 272A, Opp, Alabama. The coordinates for Channel 273C3 at Dothan are North Latitude 31–14–40 and West Longitude 85–20–10. Channel 221A can be allotted to Columbia in compliance with the Commission's minimum distance separation requirements with a site restriction 6.1 kilometers (3.4 miles) east in order to avoid a short-spacing to Station WLWI (FM), Channel 222C, Montgomery, Alabama. The coordinates for Channel 221A at Columbia are North Latitude 31–17–00 and West Longitude 85–03–00. With this action, this proceeding is terminated.

DATES: Effective August 23, 1993. The window period for filing applications for Columbia, Alabama, will open on August 24, 1993, and close on September 23, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–129, adopted June 16, 1993, and released July 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Columbia, Channel 221A, and by removing Channel 273A and adding Channel 273C3 at Dothan.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–16833 Filed 7–14–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–84; RM–8194]

Radio Broadcasting Services; Asbury, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 278C3 for Channel 278A at Asbury, Missouri, and modifies the construction permit for Station KWXD to specify operation on Channel 278C3 in response to a petition filed by William Bruce Wachter. See 58 FR 16643, March 30, 1993. The coordinates for Channel 278C3 at Asbury are 37–23–44 and 94–40–42. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 23, 1993.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commissioner's Report and Order, MM Docket No. 93–84, adopted June 17, 1993, and released July 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of the decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 278A and adding Channel 278C3 at Asbury.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–16834 Filed 7–14–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 76

[PP Docket No. 93–21, FCC 93–333]

Implementation of Section 26 of the Cable Television Consumer Protection and Competition Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Interim Report.

SUMMARY: This Interim Report was issued pursuant to section 26 of the Cable Television Consumer Protection and Competition Act of 1992, which requires that the Commission issue an Interim Report to Congress on or before July 1, 1993, regarding the migration of video sports programming from broadcast television to subscription television. The Interim Report summarizes the views of broadcasters, cable companies, sports teams and leagues and other commenters that responded to the Commission's Notice of Inquiry in this proceeding. The Interim Report makes no specific legislative or regulatory recommendations at this time. Such recommendations will be made, if appropriate, in the Commission's Final Report to Congress, which is to be issued on or before July 1, 1994.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley Halprin, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Interim Report in PP Docket No. 93–21, adopted June 24, 1993, and released July 1, 1993. The complete text of this Interim Report is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, NW., room 140, Washington, DC 20037.

Synopsis of Interim Report

1. The Interim Report to Congress analyzes the migration of sports programming from broadcast television to subscription services such as basic cable, pay cable and pay-per-view. The Interim Report summarizes data received in response to the Commission's Notice of Inquiry in this proceeding (58 FR 8248 (2/12/93)) and offers tentative findings. The Commission finds in the Interim Report that the majority of parties commenting in this proceeding, including cable programmers and sport entities, believe that sports programming has not migrated from broadcast to cable television. On the other hand, the Commission notes that a few commenters assert that the trend in distribution of sports programming has been away from broadcast television, particularly at the local level. Those commenters submit that this is detrimental to independent broadcast stations as well as members of the public who do not subscribe to cable television.

2. In its Notice of Inquiry in this proceeding, the Commission focussed on changes in the telecasting of four professional and two college sports since 1980—professional football, basketball, baseball and hockey, and college football and basketball. In the Interim Report, the Commission considers each sport in terms of national and local exposure, and in terms of regular season and post-season play. With respect to professional football, the Commission notes that all National Football League (NFL) games are shown on broadcast television, either nationally or regionally, including those that are concurrently shown on cable networks. Accordingly, the Commission tentatively concludes, NFL games have not migrated from broadcast to cable television.

3. With respect to the other professional sports, the Commission notes that a number of regular season National Basketball Association (NBA), Major League Baseball (MLB) and National Hockey League (NHL) games are shown on local cable sports channels. The Commission concludes that it appears that the majority of those games are home games and would therefore not normally be broadcast over-the-air due to sports blackout restrictions, although the record shows some migration of MLB games in local markets. In addition, the Commission notes that most post-season NBA games and all post-season MLB games are shown on broadcast television, but that a number of post-season NHL games are telecast on cable. The Interim Report points out that commenters argue that this is due to hockey's more limited audience appeal as compared with the other sports. The Interim Report also states that the Commission will seek additional information about trends in local markets for professional baseball

and hockey before issuing its Final Report.

4. With respect to college basketball, the Commission notes that all games of the NCAA men's Final Four Tournament, college basketball's premier event, are shown on broadcast television and therefore cannot be said to have migrated to cable. With respect to college football, commenters do not contend that games previously broadcast have migrated to cable television. Rather, they contend that preclusive contracts between telecasters and the various college football conferences limit the number of college football games available for broadcast by local over-the-air stations. Section 26 of the 1992 Cable Act specifically directs the Commission to investigate the existence and prevalence of such preclusive contracts. The Commission states that the record of this proceeding indicates that arrangements between the college football conferences and ABC, ESPN and regional cable sports networks may have a preclusive effect on the televising of games by local broadcast stations. The Interim Report therefore states the Commission's intention to request further information regarding such preclusive contracts at a later date.

5. The Interim Report also summarizes commenters' views regarding the future of sports programming. In general, cable and sports entities contend that broadcast television will continue to play a primary role in the distribution of sports programming. They also submit that new technologies will increase consumer choice, that retransmission consent revenues may enable broadcasters to better negotiate for cable entities for the purchase of sports programming, and that the current sports antitrust exemptions should not be revised.

6. Finally, the Commission states that it will issue a Further Notice of Proposed Rule Making in anticipation of its July 1, 1994, Final Report. In that Further Notice, the Commission expects to seek additional information on league changes and new broadcasting arrangements for the NBA, MLB and the NHL. The Commission will also request further data regarding preclusive contracts, local college football and basketball telecasts, and the cost of subscribing to the various cable sports services.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary

[FR Doc. 93–16835 Filed 7–14–93; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 58, No. 134
Thursday, July 15, 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.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 90–001A]

RIN 0583–AB29

Determining the Amenability of Birds to Mandatory Federal Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food Safety and Inspection Service (FSIS) is requesting comments, information and recommendations on what criteria FSIS should use to determine if birds other than those listed in the poultry products inspection regulations issued under the Poultry Products Inspection Act should be subject to mandatory Federal inspection. This action responds to increased interest in raising birds other than chickens, turkeys, ducks, geese and guineas, and a need for FSIS to determine their amenability to Federal inspection requirements under the Poultry Products Inspection Act.

DATES: Comments must be received on or before: October 13, 1993.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments should be directed to: Ralph E. Stafko at (202) 720–8168. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Ralph E. Stafko, Director, Policy Office, Policy Evaluation and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 720–8168.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments concerning this Notice. Written comments should be sent to the Policy Office at the address shown above. Please include docket number 90–001A in your comments. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act should make a request to Mr. Stafko at (202) 720–8168 so that arrangements can be made for such views to be presented. All comments submitted in response to this Notice will be available for public inspection in the Policy Office between 9 a.m. and 12:30 p.m. and 1:30 p.m. and 4 p.m., Monday through Friday.

Background

The Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*), defines poultry subject to inspection as "any domesticated bird whether live or dead" (21 U.S.C. 453(e)). The PPIA does not contain a definition of "domesticated bird." The poultry products inspection regulations define poultry to be "any domesticated bird (chickens, turkeys, ducks, geese, or guineas), whether live or dead" (9 CFR 381.1(b)(40)). While a review of the legislative history of the PPIA does not provide a definition as to what Congress intended "domesticated" to mean, it does clearly indicate that commercially produced gamebirds were not to be covered and subject to mandatory inspection. The legislative history indicates that gamebird breeders were usually small operators, who slaughtered by hand or might require special adjustments in equipment for such slaughter, and that the market was a seasonal one and came at peak processing time. The legislative history indicates that for these and other reasons, Congress chose to exclude them from coverage under the Act.

By comparison, the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), delineates the specified species, i.e., cattle, sheep, swine, goats, horses, mules, and other equines for which inspection is required. These same species are listed in the definition of livestock in 9 CFR 301.2(qq). Under the FMIA, there is no mandate to distinguish between domesticated or wild variants of the listed amenable species.

Products determined to be nonamendable to either the FMIA or PPIA are subject to the Federal Food, Drug and Cosmetic Act (FFDCA) and fall under the jurisdiction of the Food and Drug Administration (FDA). Thus, products of animals (e.g., deer or bear) or birds not currently listed in the regulations (e.g., ostriches, pheasants) are covered by the FFDCA. However, USDA provides voluntary inspection of water buffalo, deer, rabbits, squabs, gamebirds and other nonamenable species, on a fee for service basis, under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*).

Previous Species Amenability Determinations

Determinations of amenability of species under the FMIA have raised few problems. The express listing of amenable species has enabled the Agency to make decisions on amenability based on physical observation and biological data. For example, beefalo, which are ⅛ buffalo, ⅞ bovine, and are virtually identical in physical appearance to other bovine, have been found to be amenable to Federal inspection. Cattalo, which are ½ buffalo and ½ bovine, were deemed not amenable because of the cattalo's buffalo-like appearance and behavior.

In 1984, FSIS received inquiries from a foreign government and domestic wild game producers regarding the amenability of wild sheep and wild boar to inspection. After review, both species were determined to be amenable because swine and sheep are expressly listed by the FMIA as requiring inspection. FSIS had adhered to a literal reading of the FMIA in making these determinations. For all determinations under the FMIA, the sole issue is whether the animal is a member of the species listed, regardless of whether it is raised in the wild or on the farm—wild sheep and wild boar raised or not raised in captivity are considered amenable; deer and antelope raised or not raised in the wild are considered nonamenable.

Unfortunately, amenability decisions under the PPIA have been more difficult to reach than those under the FMIA because the amenable species of birds are not specifically listed in the PPIA. Rather, as noted earlier, Congress, when passing the PPIA, indicated only that "poultry" means any domesticated bird, whether live or dead.

Congress did not list the kinds of birds that were considered to be "domesticated," but USDA has defined "poultry," in the poultry products inspection regulations, as being certain

listed birds. This was done in an attempt to reflect the intent of Congress not to cover commercially produced gamebirds. Consequently, unlisted kinds of birds, even if commercially produced, would not be amenable to inspection and listed kinds of birds, even if raised unconventionally, would be considered amenable.

Regarding gamebirds, the legislative history of the PPIA indicates that commercially-produced gamebirds were not covered by the PPIA and subject to mandatory Federal inspection. However, Congress did not define "gamebirds." The Agency has interpreted Congress' use of the word "domesticated" in the PPIA to include only those birds which are traditionally raised in captivity for human consumption, i.e., chickens, turkeys, ducks, geese and guineas. Commercially produced gamebirds, such as pheasant, quail and partridge, have not been considered as subject to inspection, in accordance with the legislative history of the PPIA.

Amenability of Wild Turkeys and Other Poultry

A few years ago, FSIS became aware of an operation which produces "wild turkeys" for slaughter, processing and sale in interstate commerce. FSIS was requested by Toubl Gamebird Farms, Beloit, Wisconsin, (the operation in question), to declare "wild turkeys" nonamenable to mandatory inspection under the PPIA on the grounds that a wild turkey is a gamebird even when raised in captivity, and thus is not a domesticated bird. It was stated that the PPIA only covers "domesticated" birds and, therefore, does not apply to "wild turkeys." Toubl Gamebird Farms submitted information from an individual, who indicated he was an avian specialist, who attested that wild turkeys are genetically different from domesticated turkeys. Similar correspondence from other gamebird farmers and the North American Gamebird Association, Inc., reflects agreement with Toubl Gamebird Farms concerning the nonamenability of wild turkeys which are raised in captivity.[1] After considering this matter, however, FSIS determined that the processed turkeys had to be federally inspected under the PPIA. This determination was based on the view that the turkeys were not commercially produced gamebirds, but were turkeys raised in captivity, and, therefore, they were considered to be "domesticated turkeys" required to be inspected under the PPIA.

In addition to the question of the amenability of wild turkeys, FSIS is currently faced with questions about the amenability of other kinds of birds. FSIS has received inquiries about inspection from producers of ostriches, emus, rheas and mallard ducks. FSIS has made an initial determination that ostriches, emus and rheas are not amenable because, although raised in captivity, they are not poultry, i.e., chickens, turkeys, ducks, geese or guineas, as defined in the regulations. Conversely, in the case of mallard ducks, the Agency has determined that mallard ducks are amenable because they are ducks raised in captivity. A breed of fowl that is becoming increasingly popular in the Western United States is an Asiatic-derived bantam chicken known as "silkie fowl." Silkie fowl resemble the cornish hen breed in weight and size, but their skin, bone, viscera and blood vessels have a bluish-black pigmentation. FSIS has determined that silkie fowl are chickens and, thus, must be inspected.

A variety of birds other than the species listed in the regulations is being produced for food purposes, and the volume of production of those species is expected to increase. FSIS needs to make a determination whether or not those birds are "domesticated birds," and whether or not they are covered by the PPIA. In reviewing this matter, FSIS intends to consider: public health, precedent, legislative history, potential impacts on producers and processors, limited inspection resources, and the adequacy of alternative regulatory approaches that are consistent with the PPIA and the FFDCA.

Need for Objective Criteria

Consistent and predictable amenability determinations of birds have been difficult in the absence of a definition of "domesticated bird" in the PPIA and regulations issued thereunder. The need for such a definition, and for a reassessment of the criteria used for making amenability determinations, is becoming increasingly apparent in light of continuing advancements in genetic engineering, increasing public interest in consumption of birds other than those traditional poultry species, and increasing Agency workloads caused by growing consumption of poultry. Standardized definitions and criteria will promote fairer, more efficient and effective decisionmaking and will provide more consistent precedents and clearer guidance for both program personnel and affected parts of the food industry.

Request for Comments

FSIS is soliciting comments, information and recommendations in the following areas:

- Definitions of "domesticated" and "commercially produced game birds;"
- The criterion(a) FSIS should use in making amenability determinations regarding whether a bird is amendable to the requirements of the PPIA. Currently, under the PPIA, FSIS inspects only certain birds which are raised in captivity for human consumption, i.e., chickens, turkeys, ducks, geese and guineas;
- The kinds and numbers of birds, other than the species currently listed in the PPIA regulations, now being produced for human consumption;
- The kinds of birds, other than the species currently listed in the PPIA regulations, that may be produced for human consumption in the future;
- Any other comments or recommendations on the subject of determining amenability of birds to the PPIA.

The preamble to any proposed regulation would include a discussion of the comments received in response to this notice.

Done at Washington, DC, on July 9, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Service.

[FR Doc. 93–16784 Filed 7–14–93; 8:45 am]

BILLING CODE 3410–DM–M

[1] All documents referred to in this paragraph are available from the United States Department of Agriculture, Food Safety and Inspection Service, room 3171 South, 14th and Independence Avenue SW., Washington, DC 20250.

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB46

Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board) proposes to amend the regulation regarding the content of borrower rights notices for distressed loans. The FCA has learned that the foreclosure language requirement may unnecessarily offend borrowers. Therefore, the proposed regulation will no longer require that Farm Credit System institutions include a reference to foreclosure when notifying borrowers that their distressed loans may be suitable for restructuring.

DATES: Comments must be submitted on or before August 16, 1993.

ADDRESSES: Comments should be mailed or delivered (in triplicate) to

Patricia W. DiMuzio, Division Director, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all comments will be available for examination by interested parties in the Regulation Development Division, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Eric Howard, Policy Analyst, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, or James M. Morris, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The Agricultural Credit Act of 1987 (Pub. L. 100–233) enacted on January 6, 1988, amended the Farm Credit Act of 1971 (Act) to establish additional borrower rights. Final regulations on borrower rights (12 CFR parts 614, 615, and 618) were published on September 14, 1988, (54 FR 35427) and became effective on October 14, 1988. Section 614.4516 requires that the lender notify a borrower that its loan is or has become a "distressed loan" as defined in the Act, and may be suitable for restructuring. On the determination that a loan is or has become distressed, the present regulation also requires that the lender notify the borrower that the alternative to restructuring may be foreclosure.

The FCA has learned that the foreclosure language requirement may unnecessarily offend borrowers. The foreclosure language was included in § 614.4516 to ensure that borrowers whose loans are distressed will be informed that their loans could be subject to foreclosure unless they take positive action, such as filing an application for restructuring. The FCA now believes that the reference to "foreclosure" should be optional. Borrowers with distressed loans will still receive adequate warning of the possibility of foreclosure, since § 614.4519(a) requires that a qualified lender notify the borrower, not later than 45 days before commencing foreclosure proceedings, that the alternative to restructuring may be foreclosure. The FCA proposes to amend § 614.4516 to allow qualified lenders latitude in the timing of the foreclosure notification.

Comments are sought on § 614.4516.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, Banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279b-1, 2279b-2, 2279f, 2279f-1, 2279aa, 2279aa-5; sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

2. Section 614.4516 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 614.4516 Restructuring procedures.

(a) *Notice.* When a qualified lender determines that a loan is or has become a distressed loan, the lender shall provide written notice to the borrower that the loan may be suitable for restructuring. The qualified lender shall include with such notice:

* * * * *

Dated: July 10, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–16831 Filed 7–14–93; 8:45 am]

BILLING CODE 6705–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–32609; File No. S7–21–93]

RIN 3235–AF91

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

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments.

SUMMARY: The Commission is proposing for comment, amendments to its broker-dealer record preservation rule that would allow broker-dealers to employ, under certain conditions, optical storage technology to maintain records required to be retained. The Commission also is proposing that this rule be amended to codify a staff interpretation that allows broker-dealers to use microfiche for record-retention purposes.

DATES: The requested written data, views, arguments and/or comments must be received on or before September 13, 1993.

ADDRESSES: People 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. S7–21–93. 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: Michael A. Macchiaroli, Associate Director, or Julius R. Leiman-Carbia, Special Counsel, Office of Capital Markets and Financial Responsibility, Division of Market Regulation, Securities and Exchange Commission at (202) 272–2904 or –2824.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Section 17(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") requires registered broker-dealers to make, keep, furnish and disseminate reports prescribed by the Commission "as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of" the Exchange Act.[1]

Rules 17a–3 and 17a–4 under the Exchange Act[2] specify minimum requirements with respect to the business records which must be made by broker-dealers as well as the periods during which such records and other documents relating to the broker-dealer's business must be preserved. For the most part, records preserved pursuant to these rules must be kept in an easily accessible place for two years.[3] Some records, however, must be preserved for three years[4], others for six

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

[2] 17 CFR 240.17a–3 and 240.17a–4.

[3] 17 CFR 240.17a–4(a)(1).

[4] 17 CFR 240.17a–4(b).

years[5] and those that concern the legal existence of the broker-dealer (*e.g.*, partnership articles, minute books, stock certificate books) must be preserved during the life of the broker-dealer and its successors.[6]

Until 1970, paper was the sole medium for the preservation of the records required under Rules 17a–3 and 17a–4. In 1970, Rule 17a–4 was amended to permit records to be immediately produced on microfilm as an original form of record-keeping.[7] This amendment allowed for the use of microfilm provided that the following conditions set forth in paragraph (f) of Rule 17a–4 are met:

1. At all times the broker-dealer has available, for Commission examination of his records, pursuant to Section 17(a) of the Exchange Act, facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;
2. The broker-dealer arranges the records and their index, and files the films in such a manner as to permit the immediate location of any particular record;
3. The broker-dealer is ready at all times to provide, and immediately provides, any facsimile enlargement which the Commission by its examiners or other representatives may request, and
4. The broker-dealer stores separately from the original one other copy of the microfilm for the time required.[8]

In 1979, the Commission's staff interpreted Rule 17a-4 to include microfiche as well as microfilm for record-keeping purposes, provided that the requirements of Rule 17a–4(f) were satisfied.[9]

B. Technical Aspects

1. Microfiche

Microfiche and microfilm are similar record-keeping media that photographically reduce the size of document images. Like microfilm, microfiche can store computer generated documents. Microfiche stored images, however, appear on a sheet of film, rather than on spooled film as with microfilm.

2. Optical Storage Technology

Optical storage technology allows for digital data recording in a non-rewriteable, non-erasable format, such as write once, read many ("WORM"), which provides a non-alterable, permanent record storage medium. Non-rewriteable optical storage records digital information by employing a laser heat source to burn a pattern on a metallic film on a disk surface that can hold billions of bytes of data ("optical disk"). This disk is removable from the hardware necessary for the optical storage function.

When using optical disk storage in the non-rewriteable format, any record, be it computer generated (such as a computer report) or electronically digitized (such as from paper or micrographics), can be permanently recorded for long term computer based management and access.

II. Proposed Amendments and Discussion

While industry representatives have argued that the use of optical disk technology will represent cost savings for broker-dealers,[10] they concede that the use of any technology employing media other than paper for the preservation of records must be conditioned with safeguards against erasability, and with provisions for the immediate verification of the stored information and for back-up facilities.

These conditions are especially necessary when, as is the case with optical disks, the technology is relatively new and there appears to be no current set industry standard for the development of optical disk technology and for compatibility among the different optical disk systems. In the case of optical disks, additional conditions appear to be necessary to ensure that the documents etched into the disk are indexed and may be downloaded by examiners from either the Commission or the self-regulatory organizations ("SROs") or by third persons available to the examiners.

The proposed amendments require that broker-dealers using optical disk storage systems employ non-rewriteable, non-erasable technology. The use of this technology ensures that the information stored in optical disks can not be modified or removed from the optical disk without detection. As an additional protection, the proposed amendments would require that broker-dealers create duplicate copies of optical disks containing records, serialize original and duplicate optical disks, and time-date the information placed on optical disks.

To ensure full access to records during regular examinations, broker-dealers utilizing optical disk technology will be required to index optical disks and place the index on the optical disks. To facilitate review of the information preserved, broker-dealers also will be required to have downloading capacity so that records kept on optical disks may be promptly downloaded onto an alternate medium such as paper, microfilm or microfiche.

The proposed conditions also are designed to provide access to information preserved in optical disks when the broker-dealer is no longer operational, when the broker-dealer refuses to cooperate with the investigative efforts of the Commission or the SROs, or when the optical disk has not been properly indexed as to its entire contents. Accordingly, broker-dealers would be required to preserve, keep current and surrender upon request the information necessary to download records stored in optical disks.[11] In addition, at least one third party, who has the ability to download information from the broker-dealer's optical disk to another medium, must file representations with the Commission to ensure and facilitate the downloading into an alternate medium of the information kept in the broker-dealer's optical storage system.

Currently, the Commission requires the submission of similar third party representations when the records preserved pursuant to Rules 17a–3 and 17a–4 are prepared or maintained on behalf of the broker-dealer by an outside service bureau, depository, bank or other record-keeping service.[12] Like the representations currently required by the Commission, the proposed representations regarding optical disk storage are intended to ensure cooperation by third parties.

III. Request for Comments

The Commission invites interested persons to submit written data, views, arguments and/or comments on the proposed amendments.

Substantial questions have been raised regarding the adequacy of optical disk technology to preserve handwritten records or records that contain handwritten text. It has been suggested

[5] 17 CFR 240.17a–4(a) & (c).

[6] 17 CFR 240.17a–4(d).

[7] Securities Exchange Act Rel. No. 8875 (April 30, 1970), 35 FR 7643 (May 16, 1970).

[8] 17 CFR 240.17a–4(f).

[9] Letter to Mr. Robert F. Price, Alex. Brown & Sons, from Nelson S. Kibler, Assistant Director, Division of Market Regulation, Commission (November 2, 1979).

[10] The Securities Industry Association ("SIA") estimates that the cost savings that would result if a broker-dealer were to convert from a paper or microfilm record retention system to optical disk technology run from $250,000 a year for a medium-sized broker-dealer to more than $1.6 million a year for a large firm. Letter from Michael D. Udoff, Chairman, Ad Hoc Record Retention Committee, SIA, to Michael Macchiaroli, Assistant Director, Division of Market Regulation, Commission (May 19, 1992).

[11] In the alternative, broker-dealers who use outside service bureaus to preserve records may place in escrow and keep current a copy of the information necessary to access the format (*i.e.*, the logical layout) of the optical disks and to download records stored in optical disks.

[12] 17 CFR 240.17a–4(i).

that from the standpoint of examinations and discovery for judicial and quasi-judicial purposes, optical disk images (as well as microfilm or microfiche images) make very difficult the detection of alterations made to handwritten records and to records containing handwritten text. The Commission, therefore, is concerned about the use of microfilm, microfiche and optical disk technology to preserve these records, and requests comments on the advisability of preserving handwritten records and records containing handwritten text in hard copy.

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 allow broker-dealers to employ optical disk technology for record retention purposes under 17 CFR 240.17a–4.

The proposed amendments do not alter the regulatory requirement for broker-dealers using currently accepted media for record retention purposes (i.e., microfilm, microfiche or paper). Instead, the proposal expands the record retention media by allowing broker-dealers to utilize optical disk technology to store records required under 17 CFR 240.17a–3 and 240.17a–4. Accordingly, the proposed amendments will not change the impact of current regulatory record preservation 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.

List of Subjects in 17 CFR Part 240

Brokers; Reporting and record-keeping 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 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

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

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

2. § 240.17a–4 is amended by revising paragraph (f) to read as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

(a) * * *

(f) The records required to be maintained and preserved pursuant to §§ 240.17a–3 and 240.17a–4 may be immediately produced or reproduced on microfilm, microfiche or, by means of optical storage technology, on an optical disk, and be maintained and preserved for the required time in that form.

(1) If such microfilm, microfiche or optical storage substitution for hard copy is made by a member, broker or dealer, it shall:

(i) At all times have available, for examination of its records by the staffs of the Commission and the self-regulatory organizations of which it is a member, facilities for immediate, easily readable projection of microfilm, microfiche or optical storage images and for producing easily readable facsimile enlargements of such images,

(ii) Arrange the records and indexes, and file the films and optical disks in such a manner as to permit the immediate location of any particular record,

(iii) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the Commission by its examiners or other representatives may request, and

(iv) Store separately from the original, in an off-site location, a duplicate copy of the microfilm, microfiche or optical disk for the time required.

(2) If optical storage substitution for hard copy is made by a member, broker or dealer, it shall comply with the following requirements in addition to the requirements of paragraph (f)(1) of this section:

(i) The member, broker or dealer must notify its examining authority designated pursuant to section 17(d) of the Act prior to employing optical storage technology for record-retention purposes.

(ii) The member, broker or dealer must preserve the records employing optical storage technology that:

(A) Preserves the records exclusively in a non-rewriteable, non-erasable format;

(B) Verifies automatically the quality and accuracy of the optical storage recording process;

(C) Duplicates in a separate optical disk all information originally preserved and maintained by means of optical storage technology;

(D) Serializes original and duplicate optical disks, and time-dates permanently the information placed on such optical disks, and

(E) Has the capacity to download indexes and records preserved in optical disks into paper, microfilm, microfiche or other medium acceptable under § 240.17a–4(f).

(iii) The member, broker or dealer must organize and index accurately all information contained in every original and duplicate optical disk to ensure prompt access to the records.

(A) At all times, a member, broker or dealer must be able to have such indexes available for examination by the staffs of the Commission and the self-regulatory organizations of which the broker or dealer is a member.

(B) Each index must be duplicated and the duplicate copies must be stored in an off-site location, separately from the original copy of each index.

(C) Original and duplicate indexes must be preserved for the time required for the indexed records.

(iv) The member, broker or dealer must have in place an audit system providing for accountability regarding all access to records maintained and preserved using optical storage technology and any changes made to every original and duplicate optical disk.

(A) At all times, a member, broker or dealer must be able to have the results of such audit system available for examination by the staffs of the Commission and the self-regulatory organizations of which the broker or dealer is a member.

(B) The results of such audit system must be preserved for the time required for the audited records.

(v) The member, broker or dealer must maintain, keep current and surrender promptly upon request by the staffs of the Commission or the self-regulatory organizations of which the broker or dealer is a member all information necessary to download records and indexes stored in optical disks; or place in escrow and keep current a copy of the physical and logical file format of the optical disks, the field format of all different information types written on the optical disks and the source code, together with the appropriate

documentation and all information necessary to download records and indexes.

(vi) For every member, broker or dealer using optical storage technology for record preservation under this section, at least one third party ("the undersigned"), who has the ability to download information from the member's, broker's or dealer's optical disks to another acceptable medium, shall file with the Commission or its designee the following written undertakings:

The undersigned hereby undertakes to promptly furnish to the U.S. Securities and Exchange Commission ("Commission"), its designees or representatives, upon reasonable request, such information as is deemed necessary by the Commission's staff to download information kept on the broker's or dealer's optical storage system to another medium acceptable to the Commission's staff.

Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to information contained on the broker's or dealer's optical storage system, including, as appropriate, arrangements for the downloading of any record, required to be maintained and preserved by the broker or dealer pursuant to Rules 17a–3 and 17a–4 under the Securities Exchange Act of 1934 in a format acceptable to the Commission's staff. Such arrangements will provide specifically that in the event of a failure on the part of the broker or dealer to download the record into a readable format, upon being provided with the appropriate optical disks, the undersigned will undertake to do so, as the Commission's staff may request.

* * * * *

Date: July 9, 1993.

By the Commission.

Margaret H. MacFarland,

Deputy Secretary.

[FR Doc. 93–16810 Filed 7–14–93; 8:45 am]

BILLING CODE 8010–01–P

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17 CFR Part 270

[Release No. IC–19566, File No. S7–22–93]

RIN 3235–AF69

Certain Research and Development Companies

AGENCY: Securities and Exchange Commission.

ACTION: Rule proposal and request for comment.

SUMMARY: The Commission is proposing for public comment rule 3a–8 under the Investment Company Act of 1940. Rule 3a–8 is designed to address the special circumstances of research and development companies. Certain research and development companies maintain large amounts of liquid assets in the form of securities to fund their activities. Rule 3a–8 would provide a safe harbor from investment company status for a company engaged in research and development if it has held itself out and currently holds itself out as being primarily engaged in a noninvestment business, uses its capital to support its research and development activities, and makes investments that, taken as a whole, conserve capital and liquidity until it uses the funds in its primary business. Rule 3a–8 would be a nonexclusive safe harbor.

DATES: Comments must be received on or before October 13, 1993.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7–22–93. 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: L. Bryce Stovell, Senior Special Counsel, at (202) 272–2048, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is seeking public comment on proposed rule 3a–8 [17 CFR 270.3a–8] under the Investment Company Act of 1940 [15 U.S.C. 80a]. Rule 3a–8 is intended to codify the terms of a Commission order under section 3(b)(2) for ICOS Corporation, a biotechnology company.[1]

Executive Summary

The Commission is proposing rule 3a–8 under the Investment Company Act [15 U.S.C. 80a] as a safe harbor exclusion from investment company status for certain *bona fide* research and development companies ("R&D companies").[2]

To fund their research and development activities during their lengthy product development phase,[3] R&D companies, particularly biotechnology companies,[4] raise large amounts of capital through offerings of their equity securities. They generally invest the proceeds in short-term, high quality debt instruments and use the return on these investments to fund their operations until they can begin product sales.[5]

Under section 3(b)(2), the Commission may declare that a company that invests in securities is, nonetheless, not an investment company if it determines that the company is not engaged primarily in the investment business. The Commission's traditional test for making this determination, however, was developed before the emergence of publicly held companies whose primary activity was research and development. It turns largely on the composition of the applicant's income and assets, *i.e.*, whether a large percentage of the income and assets is derived from investment securities. Thus, when it is applied to R&D companies the test understates their noninvestment business, which produces little or no income or assets during their product development phase. This has caused many of the companies to be concerned about their status under the Investment Company Act.

In the ICOS order, the Commission clarified the application of the primary business test to research and development activities. The

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[1] ICOS Corp., Investment Company Act Release Nos. 19274 [Feb. 18, 1993] (notice) and 19344 [Mar. 16, 1993] (order).

[2] Statement of Financial Accounting Standards No. 2 defines "research" as planned search or critical investigation aimed at discovery of new knowledge with hope that such knowledge will be useful in developing a new product or service or a new process or technique or in bringing about a significant improvement to an existing product or process. "Development" is the translation of research findings or other knowledge into a plan or design for a new product or process or for a significant improvement to an existing product or process whether intended for sale or use. *See* Accounting for Research and Development Costs, Statement of Financial Accounting Standards No. 2 (Fin. Accounting Standards Bd. 1974) at ¶ 8 ("SFAS No. 2"). Research and development expenses generally include costs incurred for materials, equipment, facilities, personnel, intangibles, and indirect costs that are clearly related to research and development activities. *Id.* ¶ 11.

[3] Many R&D companies have a distinct life cycle. During a "start-up" phase, they raise capital and acquire personnel and facilities. During the product development phase, which marks the commencement of operations, they raise additional capital and conduct research and development activities, but have not yet developed marketable products and have no revenues from product sales. During the mature product sales phase, an R&D company begins to realize significant revenues from the sale of products it has developed. *See, e.g.*, ICOS Corp., Inv. Co. Act Rel. 19274, *supra* note 1.

[4] Biotechnology is the application of engineering and technological principles to living organisms or their components to produce new inventions or processes. An important branch of biotechnology is genetic engineering, or recombinant DNA technology. On an industry-wide basis, research and development accounts for 38% of all expenses incurred by U.S. biotechnology companies. *See* Ernst & Young, Biotech 93: Accelerating Commercialization, Seventh Annual Report on the Biotech Industry 39 (1992).

[5] Several cycles of equity offerings and depletions of the resulting investment pools can occur before an R&D company achieves profitable operations, if ever.

Commission is proposing rule 3a–8 to codify its interpretation. The rule would exclude from the definition of investment company any issuers engaged in research and development based upon how they *use* their income and assets, instead of the sources of their income and the composition of their assets. An issuer would be eligible for the safe harbor if it, directly or through a company or companies that it "controls:"[6] (a) has held itself out and currently holds itself out as primarily engaged in a noninvestment business; (b) has, on the basis of financial statements that were prepared in accordance with generally accepted accounting principles ("GAAP"), or other financial data derived therefrom (1) research and development expenses that are a substantial percentage of its total expenses for its four most recent fiscal quarters and that at least equal its investment revenues for that period; and (2) investment-related expenses that do not exceed five percent of its total expenses for its four most recent fiscal quarters;[7] and (c) makes its investments, taken as a whole, to conserve capital and liquidity until it uses the funds in its primary business. As a result, the rule would clarify that R&D companies may invest in securities other than Government securities without becoming subject to the Act.

I. Background

A. The Traditional Criteria for Evaluating Investment Company Status

Section 3 determines when an issuer is an investment company for purposes of the Act. General provisions for determining investment company status are set forth in sections 3(a) and 3(b). Specific exclusions of certain types of issuers, such as private investment companies, banks, and insurance companies, are set forth in section 3(c).

Section 3(a) has two definitions of investment company that may be relevant to R&D companies.[8] Section 3(a)(1) defines an investment company as any issuer that is, holds itself out as, or proposes to be primarily engaged in the business of investing, reinvesting, or trading in securities. Section 3(a)(3) defines as an investment company any issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities and has more than forty percent of the value of its total assets invested in "investment securities."[9] A section 3(a)(3) investment company may avoid being regulated under the Act if it is deemed, under either section 3(b)(2) or section 3(b)(1),[10] to be primarily engaged in a noninvestment business.

To receive an order under section 3(b)(2), an issuer initially must establish that it is engaged in some noninvestment business. If an identifiable noninvestment business exists, the inquiry then shifts to whether that business is "primary." In *Tonapah Mining Co.*,[11] the Commission stated that its determination of an issuer's primary business under section 3(b)(2) would be based on five principal factors: (a) The issuer's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income. The two most important factors are the sources and composition of the issuer's present income and assets.[12] The *Tonapah* test also has been applied to determine whether an issuer satisfies the primary business standard under section 3(b)(1).[13]

B. Certain R&D Companies

The *Tonapah* test, while well suited for most issuers, does not identify the primary business of R&D companies. For example, biotechnology companies typically have enormous capital requirements and a lengthy product development phase during which they derive no revenues from product sales.[14] Accordingly, they must obtain financing many years before they offer their products for sale and must invest the funds in liquid instruments so funds readily are accessible for use to fund research and development activities. Many of the instruments these companies invest in are investment securities, and therefore are counted towards section 3(a)(3)'s forty percent threshold. Also, research and development expenses, including those associated with the development of "intellectual capital," are not recognized as assets on balance sheets prepared in accordance with GAAP.[15] Development phase R&D companies thus have few assets other than securities, and often may fall within section 3(a)(3)'s definition of investment company.

To avoid section 3(a)(3),[16] some biotechnology companies have limited

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[6] Section 2(a)(9) defines control as the power to exercise a controlling influence over the management or policies of a company. The section also creates a rebuttable presumption that owners of 25% or more of a company's voting securities control the company, and that owners of less than 25% do not. This differs from how control is defined for purposes of applying generally accepted accounting principles ("GAAP"). For GAAP purposes, control generally is equated with having at least majority ownership (50.1%) of an entity. *See* Consolidated Financial Statements, Accounting Research Bulletin No. 51 (American Institute of Certified Public Accountants 1959) at ¶ 2. Unless otherwise stated, "control," when used in this release, refers to the § 2(a)(9) definition.

[7] The release requests comment, among other matters, on whether these revenues and expenses should be calculated on a basis other than GAAP. *See infra* notes 31–33 and accompanying text.

[8] Section 3(a)(2) defines investment company to include companies that issue face-amount certificates of the installment type and is not of concern to R&D companies.

[9] Section 3(a)(3) defines "investment securities" to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies.

[10] Section 3(b)(2) allows issuers that are investment companies as defined by § 3(a)(3) to apply to the Commission for relief. The Commission will exclude from the definition of investment company any issuer that it determines is engaged primarily in a noninvestment business, notwithstanding its status under § 3(a)(3). Issuers that operate directly, through majority-owned subsidiaries, or through controlled companies that conduct a similar business are eligible for relief under § 3(b)(2). An exclusion pursuant to § 3(b)(1), on the other hand, is "automatic" in that it is determined by the issuer itself. Only issuers that conduct a primarily noninvestment business directly or through wholly-owned subsidiaries may rely on § 3(b)(1). A determination under either § 3(b)(2) or § 3(b)(1) that an issuer primarily is engaged in a noninvestment business also means that it is not an investment company under § 3(a)(1). *See* M.A. Hanna Co., 10 S.E.C. 581 (1941).

[11] Tonapah Mining Co., 26 S.E.C. 426 (1947).

[12] *Id.* at 427, 430–431.

[13] *See* Moses v. Black, Fed. Sec. L. Rep. (CCH) ¶ 97,866 (S.D.N.Y. 1981). Under rule 3a–1, which codified a series of Commission orders under § 3(b)(2), if an issuer that is an investment company for purposes of § 3(a)(3) has no more than 45% of its assets invested in, and derives no more than 45% of its income from, specified securities, it will be considered engaged primarily in a noninvestment business, and, thus, excluded from investment company status under § 3(a)(3). Relying on the exemption provided by rule 3a–2 [17 CFR 270.3a–2] to "transient" investment companies is an alternative to seeking an exclusion under rule 3a–1 or § 3(b)(2). Exemptions under rule 3a–2, however, are conditioned on the applicant having a *bona fide* intent primarily to be engaged in a noninvestment business within one year. Rule 3a–2(a). An issuer may not rely on rule 3a–2 more than once in any three year period. Rule 3a–2(c). *See also* Transient Investment Companies, Investment Company Act Release No. 10943 (Nov. 16, 1979) (proposing rule 3a–2) at text preceding n.8.

[14] A study has estimated that the average research and development cost of bringing a new product to market is approximately $259 million. In addition, new pharmaceutical products generally take 10 to 12 years from conception to approval by the Food and Drug Administration. J. DiMasi, "The Cost of Innovation in the Pharmaceutical Industry," 10 J. of Health Econ. 107 (1991).

[15] *See* SFAS No. 2, *supra* note 2, at ¶ 12. Under GAAP, costs of self-developed intangible assets generally, and research and development expenses for "intellectual assets," in particular, are charged to expense when incurred.

[16] Many provisions of the Act are incompatible with how biotechnology companies conduct their business. Section 18, for example, which places limits on a registered investment company's capital structure, significantly would reduce the ability of

their investments to Government securities, as defined in section 2(a)(16). This strategy, however, has obvious costs.[17] Some biotechnology companies therefore have applied, under section 3(b)(2), for exclusions from investment company status that would clarify their ability to invest in commercial paper, bank certificates of deposit, bank repurchase agreements, and similar instruments.[18]

C. The ICOS Application and Order

ICOS, a development stage biopharmaceutical company, had no drug products approved for commercial use and, as a result, no revenues from product sales. It had, however, raised $90 million in public and private stock offerings that it had invested in short-term Government and commercial debt securities pending the use of the proceeds in its research and development programs and for capital expenditures. As a result, most of ICOS's revenues were derived from securities. On the other hand, a substantial percentage of ICOS's total expenses were for research and development,[19] its research and development expenses exceeded its investment revenues,[20] and its investment-related expenses were insignificant.[21] ICOS's historical development, its public representations of policy, and the activities of its officers and directors also all indicated that it was not engaged primarily in the investment company business.[22] ICOS, thus, applied for an order under section 3(b)(2) declaring it to be engaged primarily in a business other than investing, reinvesting, or trading in securities.

In its order, the Commission noted that ICOS appeared to be excluded from the definition of investment company by section 3(b)(1), and that similarly-situated issuers also would be excluded. Thus, the Commission stated that if a company demonstrates that it is engaged actively in *bona fide* research and development activities, the determination of its primary business should include consideration of how the company uses its income and assets, instead of the sources and composition of its income and assets. This consideration should focus on three factors: (1) Whether the company uses its securities and cash to finance its research and development; (2) whether the company has substantial research and development expenses and insignificant investment-related expenses; and (3) whether the company invests in securities in a manner that is consistent with the preservation of its assets until needed to finance operations. If a company satisfies these factors, the remaining factors of the traditional primary business test, *i.e.*, the company's historical development, its public representations of policy, and the activities of its officers and directors, then should be examined to determine whether the company is engaged primarily in a noninvestment business.[23]

D. The IBA Rule Proposal

The primary business test that the Commission used for ICOS was, in turn, similar to a rule proposal that the Industrial Biotechnology Association filed with the Commission (the "IBA Proposal").[24] The Association requested that the Commission adopt a rule excluding from the definition of investment company any issuer that: (a) Has research and development expenses incurred during the most recent four fiscal quarters that equal or exceed its gross interest [income] for such period; (b) has investment-related expenses for such period not in excess of five percent of its total expenses; (c) has held itself out and currently holds itself out as primarily engaged, directly or through one or more subsidiaries which are at least majority-owned, in a business or businesses other than investing, reinvesting, owning, holding, or trading in securities; (d) has adopted a resolution of its board of directors that establishes investment guidelines relating to diversification, credit ratings, and maturities with the stated purpose of conserving capital and maintaining liquidity until funds are used in its operations; and (e) is not a "regulated investment company" under Subchapter M of the Internal Revenue Code.

II. Proposed Rule 3a–8

In response to the IBA Proposal, the Commission is proposing rule 3a–8 as a nonexclusive safe harbor that essentially would codify the Commission's order to ICOS. In light of section 3(b)(1)'s availability for R&D companies that conduct business directly or through wholly owned subsidiaries, however, the Commission, as a preliminary matter, requests comment on whether rule 3a–8 is necessary. The Commission notes that section 3(b)(1) is not available for R&D companies that engage in a primarily noninvestment business other than either directly or through wholly owned subsidiaries. Joint ventures, for example, which appear to be used often by R&D companies, thus can raise a question as to the availability of an exclusion under section 3(b)(1). Rule 3a–8, in contrast to section 3(b)(1), would exclude from investment company status R&D companies that primarily conduct their business through more complex organizational structures.

Rule 3a–8 would exclude an issuer from being an investment company as defined in sections 3(a)(1) and 3(a)(3) if, directly or through one or more companies which it controls,[25] it satisfies certain conditions regarding how it uses its capital, and if it holds itself out as primarily engaged in a noninvestment business.

A. Use of Capital

1. Research and Development Expenses

Paragraph (b)(1) would require that research and development expenses[26] for an issuer's four most recent fiscal quarters combined be a substantial percentage of its total expenses for such period. The amounts in question would be determined by reference to financial statements prepared in accordance with GAAP or other financial data derived therefrom.[27]

Paragraph (b)(1) leaves "substantial" undefined in order to take into account fluctuations in the composition of the expenses of an eligible issuer over time. If an R&D company's research and development expenses are the majority of its expenses but for nonrecurring

biotechnology companies to raise capital. The section's restrictions on warrants, options, and other rights also would limit the companies' ability to attract scientific talent.

[17] A recent study that compared a portfolio of Treasury bonds with varying maturities to a portfolio of investment grade corporate bonds of comparable maturities found a 127 basis point portfolio yield differential. *See* The Industrial Biotechnology Association, A Proposal for a New Investment Company Act Rule for Biotechnology and other Research and Development Companies 30 (Nov. 1992) (the "IBA Proposal"). The IBA Proposal will be placed, for public inspection, in File No. S7–22–93.

[18] *See, e.g.*, ICOS Corp., *supra* note 1. *See also* Microsoft Corp., Investment Company Act Release Nos. 16430 (June 10, 1988) (notice) and 16467 (July 5, 1988) (order) (order under § 3(b)(2) to R&D company) and Genentech, Inc. (pub. avail. Sept. 24, 1980) (no-action request was denied due to the difficulty of evaluating, in a no-action context, whether the issuer had a *bona fide* intent to be primarily engaged in a noninvestment business within one year). Exemptive orders for companies treated as transient investment companies also have been granted in this area under § 6(c). *See, e.g.*, NeoRx Corp., Investment Company Act Release Nos. 17466 (May 1, 1990) (notice) and 17511 (May 29, 1990) (order).

[19] ICOS Corp., Inv. Co. Act Rel. 19274, *supra* note 1, at § I, ¶ 12.

[20] *Id.* at § I, ¶ 13.

[21] *Id.* at § I, ¶ 8.

[22] *Id.* at § II, ¶ 9. For a discussion of these factors, see *Tonapah Mining Co.*, *supra* note 11, at 427–431.

[23] *Id.* at § II A–§ II C.

[24] IBA Proposal, *supra* note 17.

[25] *See supra* note 6.

[26] *See supra* note 2.

[27] *See infra* notes 31–33 and accompanying text.

items or unusual fluctuations in recurring items, the research and development expenses certainly would be "substantial" for purposes of paragraph (b)(1). The Commission requests comment on whether paragraph (b)(1) should provide a more objective standard.

Paragraph (b)(1) also would require that research and development expenses equal or exceed investment revenues. Investment "revenues," for purposes of the paragraph, would include all investment returns, including amounts earned from dividends, interest on securities, and profits on securities (net of losses), computed in accordance with GAAP.[28]

The principal effect of paragraph (b)(1), given the circumstances of R&D companies, would be to require that an eligible issuer spend the income from and principal amount of its investments in its research and development business. This is known as an R&D company's "net monthly burn rate." It is the rate at which a company depletes its cash reserves to fund its research and development expenses. If an R&D company does not deplete its invested funds over time, a question would arise as to whether it merely is maintaining the value of its reserves for use in its operations, or running a perpetual investment program.[29]

The Commission recognizes that *bona fide* R&D companies at times experience fluctuations in their research and development expenses and investment revenues. For brief periods, research and development expenses might be less than investment revenues. Consequently, paragraph (b)(1) would permit an R&D company to remain eligible for the safe harbor if its research and development expenses equal or exceed its investment revenues during the four preceding fiscal quarters combined.

2. Insignificant Investment-Related Expenses

Paragraph (b)(2) would require that an eligible issuer devote no more than five percent of its total expenses for its four most recent fiscal quarters combined to investment advisory and management activities, investment research and selection, and supervisory and custodial fees.[30] As proposed, the basis of this computation also would be financial statements prepared in accordance with GAAP or other financial data derived therefrom.

Under paragraph (c), as discussed more fully below, an eligible issuer's investments, taken as a whole, would be made to conserve capital and liquidity pending use of the funds in the issuer's operations. Consequently, its excess funds generally would be invested in instruments presenting limited investment risk. Accordingly, investment advisory, management, research, and similar expenses should be limited.

3. Accounting Treatment Under Paragraph (b)

The introductory text of paragraph (b) provides that the determination of whether an R&D company satisfies the requirements of paragraphs (b)(1) and (b)(2) be made by reference to financial statements prepared in accordance with GAAP or other financial data derived therefrom. Under GAAP, the income and expenses of wholly owned and majority-owned subsidiaries of an eligible issuer are consolidated with the issuer's statement of operations.[31]

An R&D company's investments in nonmajority-owned "investees," which include most joint ventures, are accounted for by the equity method.[32] Statements of operations prepared on the basis of the equity method of accounting, however, reflect, in a single amount, the parent's share of a nonmajority-owned investee's net income, but not the parent's share of its investment revenues, investment-related expenses, or research and development expenses. Thus, the Commission requests comment on whether an R&D company, instead of calculating these amounts in accordance with GAAP, should be allowed or required to combine its pro rata share of the relevant expenses and revenues of one or more of its investees with its own when determining whether it meets the requirements of paragraphs (b)(1) and (b)(2).[33]

4. Invests To Conserve Capital and Liquidity

The final use of capital criterion would be that an issuer's investments in securities, taken as a whole, are made to conserve its capital and liquidity until the funds are used in its primary business or businesses. This essentially is a "purpose" test. It would be satisfied circumstantially on the basis of the overall nature of an issuer's investments. Generally, an issuer would satisfy paragraph (c) if its investment portfolio, viewed overall, presents limited investment risk.

Paragraph (c) of the Commission's proposal would be substantially less restrictive than the investment limitation in the IBA Proposal.[34] The IBA Proposal would require that an issuer's board of directors adopt a written investment policy that establishes guidelines relating to diversification, credit ratings, and maturities with the stated purpose of conserving capital and maintaining liquidity until funds are used in the operations of the issuer. Rule 3a-8 would not require a resolution by the board of directors containing prescribed investment guidelines, which, if required, could operate to disqualify otherwise eligible issuers on purely procedural grounds.

Under rule 3a–8, determinations of whether a portfolio's holding is consistent with the requirement of investing to conserve capital and liquidity would be based on such investments "taken as a whole." Thus,

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[28] The IBA Proposal would require a comparison of the issuer's research and development expenses to its "gross interest." IBA Proposal, *supra* note 17, at 19–20. The use of this term in the IBA Proposal may have been due to the proposal's relatively restrictive investment limitation. As mentioned *infra*, in the discussion of the investment limitation in ¶ (c) of proposed rule 3a-8, the investment portfolio of eligible issuers would not necessarily be limited to debt instruments that would be held to maturity. *See infra* notes 34–38 and accompanying text.

[29] At the request of the Industrial Biotechnology Association, Ernst & Young analyzed the most recent annual reports of 151 public biotechnology companies that hold themselves out to be operating enterprises and compared the disclosed interest income to research and development expenses. The results were that 142 of the 151 companies, or 94%, had research and development expenses that were greater than investment income. Of the nine companies that would not have qualified for the safe harbor in proposed rule 3a-8 on the basis of not having research and development expenses at least equal to investment revenues, seven probably were not investment companies since they either had no investment securities or their investment securities were less than 40% of the value of their total assets for purposes of § 3(a)(3). IBA Proposal, *supra* note 17, at 20.

[30] *See* 17 CFR 210.6–07.2(a) (Regulation S-X). Paragraph (b)(2) of proposed rule 3a-8 essentially duplicates ¶ (b) of the IBA Proposal. *See* IBA Proposal, *supra* note 17, at 21. Unless material, these expenses would not be stated separately in operating company financials prepared in accordance with GAAP.

[31] The consolidated statement reflects all income and expenses of these subsidiaries, whether the issuer/parent owns all or just a majority of the outstanding common stock of the subsidiary. The net income attributable to minority ownership of the subsidiaries is also deducted in arriving at consolidated net income on the consolidated income statement.

[32] *See* The Equity Method of Accounting, Accounting Principles Board Opinion No. 18 (American Institute of Certified Public Accountants 1971) ("APB No. 18"). APB No. 18 generally prescribes the equity method of accounting by investors for investments in investees when the investor owns more than 20%, but not more than 50%, of the investee's voting interests.

[33] This method of accounting, generally referred to as the *pro rata* consolidation method, currently is applied in certain industries in lieu of the equity method.

[34] *See* IBA Proposal, *supra* note 17, at 22.

the Commission would not view the acquisition of a limited amount of equity securities of a noncontrolled company, pursuant to a collaborative arrangement or "strategic business relationship," as necessarily placing the issuer outside of paragraph (c), depending upon the facts and circumstances of that investment.[35] In addition, the requirement that an eligible issuer invest to conserve capital and liquidity only would apply to securities an issuer held as investments. Paragraph (d)(2) provides that the securities of companies an issuer controls, as defined in section 2(a)(9),[36] and through which it conducts its research and development business, would be excepted.[37]

The Commission requests comment on paragraph (c). The Commission specifically requests comment on whether the paragraph's requirement, that, with certain exceptions, an eligible issuer's investments, taken as a whole, be made to conserve capital and liquidity, provides sufficient guidance.[38]

B. Conducting Business Through Controlled Companies

The rule's safe harbor would be available to any issuer that conducts business "directly or through one or more companies which it controls." This is broader than section 3(b)(1), which is limited to issuers that are engaged primarily in a noninvestment business "directly or through * * * wholly owned subsidiaries," or the IBA Proposal, which would be limited to R&D companies that conduct their business "directly or through one or more majority-owned subsidiaries."[39]

The Commission requests comment on whether the controlled company concept is an appropriate limit for the rule's scope of availability.[40] Commenters are asked to consider how this concept interacts with other conditions of the proposed safe harbor, particularly paragraph (c), in light of the amount of business R&D companies engage in through joint ventures and similar arrangements, and how capital investments and resulting interests in such arrangements are being structured.

C. Issuer Holds Itself Out as Primarily Engaged in a Noninvestment Business

Finally, paragraph (a) of the proposed rule would require that an issuer have held itself out and currently holds itself out, as primarily engaged in a business or businesses other than investing, reinvesting, owning, holding, or trading in securities. This would ensure that any issuer that holds itself out as being an investment company could not rely on the rule.

III. Cost/Benefit of Proposed Action

The proposed rule would reduce costs for both R&D companies and the Commission. The proposed rule would allow R&D companies to invest their cash reserves in securities that present limited investment risk, thus increasing their number of opportunities for higher investment returns, while allowing them to remain excluded from regulation under the Act. This excluded status would be obtained by meeting the criteria of the proposed rule, which would be self-operating. The Commission also would benefit in that the staff would have to review fewer applications for relief in this area.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rule 3a–8. The Analysis explains that the proposed rule essentially would codify a new test that, if satisfied, would allow R&D companies to expand their investment programs without becoming subject to the Act. The Analysis also explains that in order to be eligible for the nonexclusive safe harbor the proposal would create, R&D companies, directly or through companies which they control, would be required to have held themselves out and to currently hold themselves out as not primarily engaged in the investment business, spend their investment revenues on their primary business, have substantial research and development expenses and insignificant investment-related expenses, and, other than certain exceptions, make their investments, taken as a whole, to conserve capital and liquidity for use in their operations.

The only significant alternative to the proposal would be to limit R&D companies to reading the precedent of Commission orders under section 3(b)(2) into section 3(b)(1), an existing self-operating statutory exclusion. This section, however, may not be available to all R&D companies. In addition, industry representatives have advised the Commission that a rule would provide greater certainty in this area. The Commission therefore concluded that the proposal would be less burdensome than such alternative and, thus, would minimize any impact upon, or cost to, small businesses.

To obtain a copy of the Initial Regulatory Flexibility Analysis, write to L. Bryce Stovell, at Mail Stop 10–6, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

V. Statutory Authority

The Commission is proposing rule 3a–8 pursuant to sections 6(c) and 38(a).

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

For the reasons set out in the preamble, the Commission is proposing to amend Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39 unless otherwise noted;

* * * * *

2. Section 270.3a–8 is added to read as follows:

§ 270.3a–8 Certain research and development companies.

Notwithstanding sections 3(a)(1) or 3(a)(3) of the Act, an issuer will be

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[35] ICOS, for example, had entered into strategic relationships with several companies on research and development projects. *See* Amended and Restated Application by ICOS Corporation for an Order Pursuant to Sections 6(c) and 6(e) of the Investment Company Act of 1940 to the Division of Investment Management, SEC 6–7 (Oct. 26, 1992), File No. 812–7885.

[36] *See supra* note 6.

[37] Paragraph (d)(2)'s proviso for qualifying for its exclusion, *i.e.*, that the securities be issued by the issuer's controlled companies that conduct types of businesses that are similar to the issuer's, is intended to distinguish between an issuer's primarily investment-oriented and noninvestment-oriented activities. *Compare with* American Manufacturing Company, 41 S.E.C. 415 (1963) (determining whether an issuer was primarily engaged in a noninvestment business "through controlled companies conducting similar types of businesses" for purposes of § 3(b)(2)(B)). The securities of controlled companies in other businesses would be subject to ¶ (c) of rule 3a–8.

[38] For example, commenters should consider whether ¶ (c) should include a brighter line of distinction between permissible and impermissible investments. *Cf., e.g.*, rule 2a–7(a)(5) [17 CFR 270.2a–7(a)(5)].

[39] *See* IBA Proposal, *supra* note 17, at 21–22.

[40] In contrast, rule 3a–1 uses the primarily controlled company concept to distinguish securities representing investments in the businesses of underlying operating companies through which an issuer engages in a primarily noninvestment business from mere investments in securities that are subject to the rule's income and assets test. Rule 3a–1(a)(4). *See, e.g.*, Standard Shares, Inc., Investment Company Act Release Nos. 10200 (Apr. 11, 1978) (notice) and 10234 (May 9, 1978) (order). The Commission is concerned, however, that using this concept in rule 3a–8 could restrict the utility of the safe harbor.

deemed not to be an investment company if, directly or through one or more companies which it controls:

(a) It has held itself out, and currently holds itself out, as being primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities;

(b) It has, on the basis of financial statements prepared in accordance with generally accepted accounting principles or other financial data derived therefrom:

(1) A substantial percentage of its total expenses for the most recent four fiscal quarters that are research and development expenses and those expenses equal or exceed its revenues from investing, reinvesting, owning, holding, or trading in securities; and

(2) Expenses for investment advisory and management activities, investment research and selection, and supervisory and custodial fees and expenses for the most recent four fiscal quarters that do not exceed 5 percent of its total expenses; and

(c) Its investments in securities, taken as a whole, are made to conserve its capital and liquidity until funds are used in its primary business or businesses.

(d) For purposes of this section:

(1) "control" shall have the same meaning as in section 2(a)(9) of the Act; and

(2) "investments in securities" shall include all securities owned by the issuer other than securities issued by persons controlled by the issuer that conduct types of businesses that are similar to the issuer's.

Dated: July 9, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16811 Filed 7–14–93; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CG07–93–038]

Special Anchorage Area: Garrison Bight, Key West, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish a special anchorage area in Garrison Bight, Key West, Florida. The bay bottom within the proposed special anchorage area is environmentally sensitive and prone to damage by vessel anchors. This regulation is expected to reduce anchor damage to the bay bottom by fostering the use of installed mooring buoys.

DATES: Comments must be received on or before August 30, 1993.

ADDRESSES: Comments should be mailed to the Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Brickell Plaza Federal Building, Miami, FL 33131. Attn: Lieutenant E. Gray.

The comments and other materials referenced in this notice will be available for inspection and copying at room 406, 909 SE 1st Avenue, Miami, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant E. Gray, Tel: (305) 536–5621.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD07–93–038) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned; however, one may be held if written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are Lieutenant E. Gray, project officer for the Seventh District Aids to Navigation and Waterways Management Section, and Lieutenant J. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of the Regulation

This proposed regulation establishes a special anchorage area in Garrison Bight, Key West, FL. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of part 110. The regulation is being established to allow vessels to anchor in the area without displaying anchor lights that would otherwise be required.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

The U.S. Coast Guard, the lead federal agency for purposes of the National Environmental Policy Act (NEPA), intends to prepare a "Categorical Exclusion" in accordance with its own NEPA implementing procedures. "Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementing NEPA regulations. A "Categorical Exclusion" is prepared when neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 110 of title 33, Code of Federal Regulations, as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.73c is added to read as follows:

§110.73c Garrison Bight, Key West, FL.

The area bounded by a line beginning at latitude 24°34'41.7" N, longitude 81°47'25.7" W; thence east to latitude 24°34'41.7" N, longitude 81°46'58.1" W; thence southwesterly to latitude 24°34'25.5" N, longitude 81°47'09.5" W; thence southwesterly to latitude 24°34'04.5" N, longitude 81°47'15.5" W; thence southwesterly to latitude 24°34'03.9" N, longitude 81°47'19.7" W; thence to the origin.

Note: The administration of permanent moorings within the special anchorage area is exercised by the Director, Port and Transit Authority, City of Key West pursuant to local ordinances. The City of Key West will install suitable navigational aids to mark the limits of the special anchorage area.

Dated: June 18, 1993.

W. P. Leahy,

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

[FR Doc. 93-16701 Filed 7-14-93; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 110

[CGD07-93-035]

Anchorage Ground; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to change the anchorage ground of St. Johns River, Jacksonville, FL in order to disestablish anchorage grounds with poor bottom holding capabilities and to disestablish the portions of anchorage grounds which currently extend into the federal channel. This change will clearly define the anchorage grounds currently in use in the St. Johns River and will delete outdated information contained in the regulation.

DATES: Comments must be received on or before August 30, 1993.

ADDRESSES: Comments should be mailed to the Commanding Officer, U.S. Coast Guard Marine Safety Office, 2831 Talleyrand Ave., Jacksonville, FL. 32206. Attn: Lieutenant Commander William Daughdrill.

The comments and other materials referenced in this notice will be available for inspection and copying at 2831 Talleyrand Ave., Jacksonville, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander William Daughdrill, Tel: (904) 232-2648.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD7 93-35) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned; however, one may be held if written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are Lieutenant E. Gray, project officer for the Seventh District Aids to Navigation and Waterways Management Section, and Lieutenant J. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of the Regulation

This proposed regulation clearly defines the anchorage grounds currently in use in the St. Johns River and eliminates the outdated information now contained in 33 CFR 110.183, the Coast Pilot Volume Four (chapters 2 and 9) and NOAA Chart 11491.

These proposed regulations incorporate current Captain of the Port policies regarding the anchoring of vessels within the Port of Jacksonville. These changes delete anchorages "D", "E" and "F" as they have not been utilized for more than three years because of poor bottom holding capabilities and their location within the main shipping channel, which poses an inherently hazardous condition. All references to current anchorages "A" and "B" have been deleted. These anchorages have long since been incorporated into one large anchorage area (known locally as the "upper anchorage"), anchorage "C". Currently designated anchorage "C" (upper anchorage) will become a newly designated anchorage ground "A" (Alpha) and will limit its use to vessels of 250 feet or less (LOA). A new anchorage ground "B" (Bravo), (locally known as the "lower anchorage"), will be established which would provide anchorage for vessels of a draft of 24 feet or less. Vessels which do not meet the restricting criteria of either of the newly established anchorages ("A" or "B") would require specific permission from the Captain of the Port prior to anchoring within the Port of Jacksonville. These proposed anchorages ("A" and "B") will provide commercial shipping with temporary anchorages for berth shifting and early/late lay berths for vessels requiring particular tide stages to enter or leave the Port of Jacksonville. This regulation is issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of part 110.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. These proposed anchorage grounds have been in fact utilized for this purpose for the past three years by the local pilots, vessel operators and other maritime parties for commercial vessels. This change will assure that procedures, as practiced, will be in accordance with the regulation. Since the impact of this is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

The U.S. Coast Guard, the lead federal agency for purposes of the National Environmental Policy Act (NEPA), intends to prepare a "Categorical Exclusion" in accordance with its own NEPA implementing procedures. "Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementing NEPA regulations. A "Categorical Exclusion" is prepared when neither an environmental

assessment nor an environmental impact statement is required.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposed to amend part 110 of title 33, Code of Federal Regulations, as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.183 is revised to read as follows:

§ 110.183 St. Johns River, FL.

(a) *The anchorage grounds.*

(1) *Anchorage A.* (Upper Anchorage) Shoreward of a line located as follows: Beginning at a point on the south shore westerly of the entrance to Miller Creek at latitude 30°18′43.8″ N, longitude 81°38′15″ W; thence north 300 yards to latitude 30°18′52.8″ N, longitude 81°38′15″ W; thence southeast to latitude 30°18′47.6″ N, longitude 81°37′47.6″ W; thence northeast to latitude 30°18′55″ N, longitude 81°37′29″ W; thence northeast to latitude 30°19′06″ N, longitude 81°37′27″ W; thence east to latitude 30°19′6″, longitude 81°37′02″ W; thence south to Empire Point at latitude 30°19′01.2″, longitude 81°37′02″ W.

(2) *Anchorage B.* (Lower Anchorage) Beginning at a point on the eastern shore of the river at 'Floral Bluff' latitude 30°21′00″ N, longitude 81°36′41″ W; thence to latitude 30°20′00″ N, longitude 81°37′03″ W, thence to latitude 30°21′00″ N, longitude 81°37′06″ W; thence to latitude 30°21′50″ N, longitude 81°36′56″ W; thence to a point on shore latitude 30°21′54″ N, longitude 81°36′48″ W.

(b) *The regulations.* (1) Except in cases of emergency or for temporary anchorage as authorized in the following subsections, vessels must have authorization from the Captain of the Port to anchor in the St. Johns River, as depicted on NOAA chart 11491, between the entrance buoy (STJ) and the Main Street Bridge (latitude 30°19′20″ N, longitude 81°39′32″ W).

(2) Anchoring within General Anchorage A is restricted to vessels less than 250 feet in length.

(3) Anchoring within General Anchorage B is restricted to vessels with a draft of 24 feet or less of any length.

(4) General Anchorages A and B are temporary anchorages. Vessels meeting the applicable restrictions of subsection (b)(2) or (b)(3) of this section may anchor for up to 24 hours without a permit from the Captain of the Port. Vessels not meeting the applicable restrictions of subsection (b)(2) or (b)(3) must obtain authorization from the Captain of the Port before anchoring in General Anchorages A or B.

Dated: June 22, 1993.

William P. Leahy,

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

[FR Doc. 93–16707 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD 09–93–006]

Drawbridge Operation Regulations; Mainstee River, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Michigan Department of Transportation and the city of Mainstee, Michigan, the Coast Guard is considering a change to the operating regulations governing the US–31 highway bridge, mile 1.14, the Maple Street highway bridge, mile 1.1, and the Chessie System Railroad bridge, mile 1.5 across the Mainstee River in Mainstee, Michigan, by extending the periods of time when bridgetenders are not required to be in constant attendance at the bridges. This action should relieve the bridge owners of the burden of having bridgetenders constantly in attendance at the bridges and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before August 30, 1993.

ADDRESSES: Comments may be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, or may be delivered to room 2083D at the same address between the hours of 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 522–3993. The Commander Ninth Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Bloom Jr., Chief, Bridge Branch, telephone (216) 522–3993.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD09–92–006) and specific section of this proposal to which each comment applies, and give reason for each comment. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

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

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Robert W. Bloom, Jr. at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Mr. Fred H. Mieser, Project Manager, and Commander M. Eric Reeves, Project Counsel, Nineth Coast Guard District.

Background and Purpose

Presently, the Maple Street, US–31 highway, and Chessie System Railroad bridges are not required to have bridgetenders in constant attendance at the bridges from January 1 through March 31, and the draws need not open unless notice is given to the bridge owners at least 24 hours in advance of a vessel's time of intended passage through the draws.

The owners of both highway bridges requested that the present period of time when bridgetenders are not required to be in constant attendance at the bridges be extended, allowing for the removal of bridgetenders, from November 1 through April 30. In addition, the owners requested the removal of bridgetenders between the hours of 10 p.m. and 6 a.m., seven days a week, from May 1 through October 31. Both proposals would reduce the burden to the bridge owners of the requirement to have bridgetenders in constant attendance at the bridges during periods of time when there are few, if any,

requests for bridge openings. The few vessels that would require the bridges to open during the unattended periods from May through October 31, between the hours of 10 p.m. and 6 a.m., would be accommodated by giving a two (2) hours advance notice, and, for the unattended period from November 1 through April 30, by giving a 23 hours advance notice.

Discussion of Proposed Amendment

Since 1988, under the authority of 33 CFR 117.45, the Coast Guard has annually authorized the owners of the Maple Street and US-31 Highway bridges to remove bridgetenders for additional periods of time during the winter months. Allowing the removal of bridgetenders to begin on November 1 instead of January 1, and end on April 30 instead of March 31, has not caused any problems or generated any complaints from boaters. Data furnished by the owners of the highway bridges indicate that for the period of time from May 1 through October 31, between the hours of 10 p.m. and 6 a.m., there was an average of 24 requests to have the bridge opened for the passage of a vessel, 19 requests were for commercial vessels and 5 for recreational vessels. In order to cause the least amount of impact on the few vessels that do transit the river between the hours of 10 p.m. and 6 a.m., during the navigation season, the 24 hours advance notice requirement was changed to a two (2) hours advance notice. Requiring vessel operators to give an advance notice to have the bridges open for the additional periods of time should not adversely affect vessel movement.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The additional periods of time when the bridges would be unattended are times when there are few requests to have the bridges opened for the passage of vessel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since vessels could navigate the Manistee River by giving an advance notice during the periods of time the bridges are unattended, and the impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

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

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.637 is revised to read as follows:

§ 117.637 Manistee River.

(a) The draws of the Maple Street bridge, mile 1.1, and US–31 highway bridge, mile 1.4, both at Manistee, shall operate as follows:

(1) From May 1 through October 31 from 6 a.m. to 10 p.m., the bridges shall open on signal. From 10 p.m. to 6 a.m., the bridges need not open unless notice is given at least two hours in advance of a vessel's time of intended passage through the draws.

(2) From November 1 through April 30, the bridges need not open unless notice is given at least 24 hours in advance of a vessel's time of intended passage through the draws.

(b) The Chessie System railroad bridge, mile 1.5, at Manistee, shall open on signal from May 1 to October 31. From November 1 to April 30, the bridge need not open unless notice is given at least 24 hours in advance of a vessel's time of intended passage through the draw.

Dated: June 22, 1993.

G.A. Penington,

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

[FR Doc. 93–16699 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AF94

Procedural Due Process and Appellate Rights

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning procedural due process and appellate rights. This proposed amendment is necessary to clearly reflect VA policy concerning the scheduling of claimant hearings. The intended effect of this amendment is to stipulate that a claimant hearing will not normally be scheduled solely for the purpose of receiving argument by a claimant's representative, and that the claimant is expected to be present at the hearing.

DATES: Comments must be received on or before August 16, 1993. Comments will be available for public inspection until August 24, 1993. The amendment is proposed to be effective the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until August 26, 1993.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: It has been the long-standing policy of VA to offer claimants personal hearings as an integral part of the claims adjudication process. Hearings are held so that claimants may introduce into the record, in person, any available evidence which the claimant may consider material and any arguments and contentions which he or she may consider pertinent. They are held only at the request of the claimant, however, since VA does not require that evidence be submitted in person. Any evidence which the claimant presents, whether documentary, testimonial, or any other form, becomes part of the permanent VA record.

In keeping with the purpose of claimant hearings, VA expects that the claimant and witnesses, if any, will be present at the hearing. A hearing will not normally be scheduled solely for the purpose of receiving argument by a claimant's representative, since the adjudication process affords adequate alternative opportunities for the representative to present argument in support of a claim. Although current regulations at 38 CFR 3.103(c)(2) do indicate that the purpose of a hearing is for a claimant to present evidence "in person," they do not clearly state that a claimant hearing will not normally be scheduled solely for the purpose of receiving argument by a claimant's representative. In order to preclude any misunderstanding, we propose to amend § 3.103(c)(2) accordingly.

We propose to make this amendment of § 3.103(c)(2) effective the date of publication of the final rule. The Secretary finds good cause for doing so since this amendment clarifies an existing regulation and does not represent a change in current VA policy.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: March 11, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

§ 3.103 [Amended]

2. In § 3.103(c)(2), remove the first two sentences and add, in their place, the words "The purpose of a hearing is to permit the claimant to introduce into the record, in person, any available evidence which he or she considers material and any arguments or contentions with respect to the facts and applicable law which he or she may consider pertinent. All testimony will be under oath or affirmation. The claimant is entitled to produce witnesses, but the claimant and witnesses are expected to be present. The Veterans Benefits Administration will not normally schedule a hearing for the sole purpose of receiving argument from a representative."

[FR Doc. 93–16729 Filed 7–14–93; 8:45 am]

BILLING CODE 8320–01–U

38 CFR Part 3

RIN 2900–AG28

Procedural Due Process and Appellate Rights

AGENCY: Department of Veterans Affairs.

ACTION: Proposed Rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations concerning procedural due process and appellate rights. The change will add three exceptions to the general requirement that a pretermination/reduction notice must be sent to a claimant prior to accomplishing an action adversely affecting benefit payments. The intended effects of the proposal are to allow earlier adjudicative response in certain situations and to reduce the amount of potential overpayments.

DATES: Comments must be received on or before August 16, 1993. Comments will be available for public inspection until August 24, 1993. This amendment is proposed to be effective 30 days after date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 170, at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until August 24, 1993.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 233–3005.

SUPPLEMENTARY INFORMATION: Section 3.103(b)(1) of title 38, Code of Federal Regulations, sets forth claimants' rights to notices of VA decisions and governs the contents of those notices. Section 3.103(b)(2) provides that if a VA decision involves an adverse action (discontinuance or reduction of benefit payments), VA generally is required to issue a pretermination/reduction notice providing a beneficiary 60 days within which he or she may offer evidence to show why the adverse action should not be taken. The proposed adverse action must be deferred until expiration of the 60-day notice period.

Section 3.103(b)(3) provides for three specific exceptions to the pretermination/reduction notice

requirement, namely where the action is based on: (1) Certain information provided by beneficiaries about income, net worth, dependency, or marital status; (2) failure to return an eligibility verification report (EVR); or (3) evidence reasonably indicating the death of a beneficiary. The rationale behind these exceptions is to prevent issuance of benefit payments where it is reasonable to conclude that the beneficiary either would not receive them or would not be entitled to them, and that an attempt to give the beneficiary advance notice would be unsuccessful or of little or no value in protecting the beneficiary's rights. Except in certain instances of beneficiary death, contemporaneous notices of these adverse actions are required. In this current rulemaking we are proposing to amend § 3.103(b)(3) to add three exceptions to the general requirement of § 3.103(b)(2): (1) Notice from a beneficiary to VA renouncing benefits, (2) notice from a beneficiary to VA that he or she has reentered active military service, and (3) garnishment orders under the Child Support Enforcement Act.

Renouncement is a written and signed statement from a beneficiary giving up the right to receive VA benefit payments (38 U.S.C. 5306; 38 CFR 3.106). Termination for renouncement is effective the last day of the month in which the renouncement is received (38 CFR 3.500(q)). Inasmuch as renouncement is a right granted by law, we find no good reason to delay action on a claimant's exercise of that right.

Issuing a pretermination notice would serve only to ensure disbursement of payments which the claimant no longer wants and is no longer entitled to receive and would thereby create an overpayment. We believe that in this instance a contemporaneous notice is appropriate and in the best interest of both the claimant and VA.

Active service pay may not be received concurrently with VA compensation or pension (38 U.S.C. 5304(c); 38 CFR 3.700(a)). Termination for receipt of active service pay is effective the day preceding the date of entry onto active duty (38 CFR 3.501(a)). Veterans reentering active service are often aware of the prohibition against concurrent receipt and accordingly notify VA of their change in status. In instances where veterans notify VA specifically of the nature of their service and the date of reentry, we believe that it is proper to terminate benefits as soon as possible and provide contemporaneous notice of our action. However, unless it is clear that notification to VA from a veteran is made with knowledge or notice of the statutory prohibition, a pretermination notice still would be required before VA could take final action. A notice of reentry into active service received from the Service Department rather than from the beneficiary would be considered a third-party notification requiring a pretermination notice under § 3.103(b)(2). Since removal of the requirement to send a pretermination notice in this situation will allow earlier adjudicative action and reduce or eliminate overpayments in many cases, without violating a beneficiary's due process rights, we believe that it is in the best interests of both the beneficiary and VA to do so.

Under section 659(a) of title 42, United States Code, moneys, entitlement to which is based upon remuneration for employment, and which are due from or payable by the United States, including its agencies, subdivisions, or instrumentalities, to any individual, are subject to legal process brought for the enforcement of legal obligations to provide child support or to pay alimony. Under 42 U.S.C. 662(f)(2), the phrase "based upon remuneration for employment" includes compensation paid by VA to a former member of the Armed Forces who has waived a portion of his military retired pay to receive compensation. Thus, the amount of VA compensation received in lieu of military retired pay is subject to garnishment for child support or alimony. VA would not need to provide pretermination/reduction notice before effecting garnishment ordered under the authority of 42 U.S.C. 659(a) because an opportunity for a hearing and presentation of evidence would already have been given by the court issuing the order. Such an opportunity represents adequate protection of the veteran's due process rights. For VA to offer a further opportunity for a hearing and presentation of evidence on whether the garnishment is proper would be redundant and beyond VA's authority.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more;

(2) They will not cause a major increase in costs or prices;

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There is no affected Catalog of Federal Domestic Assistance program number

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: May 28, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is proposed to be amended to read as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.103 [Amended]

2. Section 3.103(b)(3)(i) is amended by adding the words "to VA" after the word "provided."

3. In § 3.103 delete the word "or" at the end of paragraph (b)(3)(ii); remove the "." at the end of paragraph (b)(3)(iii) and add in its place a ","; and add paragraphs (b)(3)(iv), (b)(3)(v), (b)(3)(vi), and an authority citation to read as follows:

§ 3.103 Procedural due process and appellate rights.

* * * * *

(b) * * *

(3) * * *

(iv) An adverse action is based upon a written and signed statement provided by the beneficiary to VA renouncing VA benefits (see § 3.106 of this part on renouncement),

(v) An adverse action is based upon a written statement provided to VA by a veteran indicating that he or she has returned to active service, the nature of that service, and the date of reentry into service, with the knowledge or notice that receipt of active service pay precludes concurrent receipt of VA

compensation or pension (see § 3.654 of this part regarding active service pay), or

(vi) An adverse action is based upon a garnishment order issued under 42 U.S.C. 659(a).

(Authority: 38 U.S.C. 501(a))

[FR Doc. 93–16731 Filed 7–14–93; 8:45 am]
BILLING CODE 8320–01–U

38 CFR Part 3

RIN 2900–AG33

Procedural Due Process and Appellate Rights

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations concerning procedural due process and appellate rights. This proposed amendment is necessary to clarify the number of decision-makers VA will provide to conduct claimant hearings. The intended effect of this amendment is to clarify that the requisite number of decision-makers for the conduct of claimant hearings is one.

DATES: Comments must be received on or before August 16, 1993. Comments will be available for public inspection until August 24, 1993. This amendment is proposed to be effective the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until August 24, 1993.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: 38 CFR 3.103(c)(1) currently states that VA will furnish personnel who have original determinative authority for the conduct of claimant hearings at Veterans Benefits Administration (VBA) regional offices without specifying any requisite number. Because the regulation does not specify the number, we believe the term "personnel" might reasonably be construed as encompassing one, two, or several persons. Even though it is well established that unless the context indicates otherwise terms which are plural in form may include the singular as well, some might argue that the term "personnel" signifies that VA must furnish more than one person to conduct hearings.

We are proposing to eliminate any possible confusion the current wording may create by amending 38 CFR 3.103(c)(1) to state that VA will provide one or more VA employees who have original determinative authority to conduct claimant hearings. Congress, through enactment of what is now 38 U.S.C. 7102(b), has indicated its consent to single members holding hearings before the Board of Veterans Appeals. There is nothing in the statutes to suggest that Congress intended a different procedure with respect to VBA hearings. We are also proposing to make a conforming amendment to the language of 38 CFR 3.103(c)(2), which refers to the responsibility of VA personnel conducting hearings.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have 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.

The Catalog of Federal Domestic Assistance program numbers are 64.104, 64.105, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved May 28, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is proposed to be amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.103 [Amended]

2. In § 3.103(c)(1), in the third sentence, remove the word "personnel" and insert, in its place, the words "one or more employees"; in the fourth sentence, remove the words "VA personnel" and insert, in their place, the words "one or more VA employees".

3. In § 3.103(c)(2), in the third sentence, remove the word "personnel" and insert, in its place, the words "employee or employees".

[FR Doc. 93–16730 Filed 7–14–93; 8:45 am]
BILLING CODE 8320–01–U

38 CFR Part 21

RIN 2900–AG03

Veterans Education; Standardization of Programs

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: VA (Department of Veterans Affairs) has been reviewing regulations for the purpose of standardizing procedures whenever possible. In the course of the review it was noted that the rules governing time limits provided veterans training under the Montgomery GI Bill—Active Duty is not exactly the same as that provided eligible persons training under the Dependents' Educational Assistance Program with regard to perfecting a claim. Furthermore, rules governing notification which had been provided to those receiving benefits under the now-expired Vietnam Era GI Bill with regard to a loss of a dependent had not been extended to the Montgomery GI Bill—Active Duty beneficiaries in similar circumstances. These proposed regulations remedy this situation by standardizing these rules.

DATES: Comments must be received on or before August 16, 1993. Comments will be available for public inspection until August 24, 1993.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until August 24, 1993

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233–2092.

SUPPLEMENTARY INFORMATION: Under current regulations an individual seeking to complete a claim under the Montgomery GI Bill—Active Duty can have an extension of the time limit for submitting requested evidence if he or she can show good cause why the deadline could not be met. This is not included in the regulations governing the Dependents' Educational Assistance Program, but VA can see no good reason why it should not be included. Accordingly, this proposal would extend this provision to that program.

On the other hand, the regulations governing the Dependents' Educational Assistance Program provide that the time period for submitting the evidence will not begin until VA notifies an eligible person of the need for submitting it. This is based upon the provisions of § 3 110, title 38, CFR. This provision has never appeared in the regulations governing the Montgomery GI Bill—Active Duty, but VA can see no good reason why it should not. Accordingly, this proposal would extend this provision to the Montgomery GI Bill—Active Duty.

A veteran receiving benefits under the Vietnam Era GI Bill was given procedural protections when VA received notice that he or she had lost a dependent. This is similar to the protection afforded a recipient of disability compensation or disability pension when he or she loses a dependent. Although some veterans receiving educational assistance under the Montgomery GI Bill - Active Duty receive additional benefits for their dependents, and so suffer a reduction in benefits when a dependent is lost, VA had not extended the procedural protections in the Vietnam Era GI Bill to these veterans, nor has the department given them the protection afforded under the disability compensation or disability pension programs. A careful review has led VA to believe that these veterans should be extended this protection. Accordingly, this proposal would provide this procedural protection to these veterans.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects 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 export markets.

The Secretary of Veterans Affairs has certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this proposal are 64.117 and 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 31, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21, subparts C and K are proposed to be amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

1. The authority citation for part 21, subpart C continues to read as follows:

Authority: 72 Stat. 1114, 1193, as amended (38 U.S.C. 501(a), 3500–3566)

2. Section 21.3032 is amended by adding paragraph (b)(3) to read as follows.

§ 21.3032 Time limits.

* * * * *

(b) *Failure to furnish claim or notice of time limit.* * * *

(3) When a claim is incomplete, time limits within which a claimant or beneficiary is required to complete the claim through submission of evidence, documents or other information may be extended for good cause shown. The time limits within which a claimant or beneficiary must act to challenge an adverse VA decision may be extended for good cause shown. Except as provided in § 19.130 of this chapter when extension is requested after expiration of a time limit, the action required of the claimant or beneficiary must be taken concurrently with or prior to the filing of a request for extension of the time limit, and good cause shown as to why the required action could not have been taken during the original time period and could not have been taken sooner than it was. Denials of time limit extensions are separately appealable issues.

* * * * *

Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

3 The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. chapter 30, Pub. L. 98–525, 38 U.S.C. 501(a) .

4. Section 21.7032 is amended by adding paragraph (d)(3) to read as follows.

§ 21.7032 Time limits.

* * * * *

(d) *Failure to furnish form or notice of time limit.* * * *

(3) VA's failure to furnish an eligible person notice of the time limit within which evidence must be submitted to complete a claim, or notice of the time limit within which to challenge an adverse VA decision, shall extend the time limit for such action in accordance with the provisions of § 3.110 of this chapter.

* * * * *

5. Section 21.7320 and its authority citations are added to read as follows.

§ 21.7320 Procedural protection; reduction following loss of dependent.

(a) *Notice of reduction required when a veteran loses entitlement to additional educational assistance for a dependent.* (1) Except as provided in paragraph (a)(2) of this section, VA will not reduce

an award of educational assistance following the veteran's loss of a dependent unless:

(i) VA has notified the veteran of the adverse action, and

(ii) VA has provided the veteran with a period of 60 days in which to submit evidence for the purpose of showing that the educational assistance should not be reduced.

(2) When the reduction is based solely on written, factual, unambiguous information as to dependency or marital status provided by the veteran or his or her fiduciary with knowledge or notice that the information would be used to determine the monthly rate of educational assistance allowance:

(i) VA will not send either an advance or a prereduction notice as stated in paragraph (a)(1) of this section, but

(ii) VA will send notice of the adverse action contemporaneous with the reduction in educational assistance.

(Authority: 38 U.S.C. 5112, 5113)

[FR Doc. 93–16600 Filed 7–14–93; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Region II Docket No. NY–7–1–5910; FRL–4679–1]

Approval and Promulgation of Maintenance Plan and Designation of Areas for Air Quality Planning Purposes for Carbon Monoxide, State of New York

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is announcing its intent to redesignate Onondaga County in New York State to attainment of the air quality standards for carbon monoxide (CO) and to approve a maintenance plan that will insure that the area remains in attainment.

On November 13, 1992, New York State submitted a maintenance plan and a request to redesignate the Onondaga County CO nonattainment area from nonattainment to attainment. In this action EPA is proposing to approve New York's submittals because they meet the requirements set forth in sections 175A and 107(d)(3)(E) of the Clean Air Act, for maintenance plans and redesignations, respectively. Upon final approval of the maintenance plan, it will become a federally enforceable part of the CO State Implementation Plan for Onondaga County.

DATES: Comments must be received on or before August 16, 1993.

ADDRESSES: All comments should be addressed to: William J. Muszynski, P.E., Acting Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the state submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, Room 1034A, New York, New York 10278

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1034A, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 110(a)(1) and 172 of the Clean Air Act, as amended in 1977 (1977 Act), required each area that was designated nonattainment based on a failure to meet the carbon monoxide (CO) national ambient air quality standards (NAAQS) to develop a State Implementation Plan (SIP). These SIPs must have sufficient control measures to attain the standard expeditiously and to maintain the standard. The plans were to provide for attainment by December 31, 1982.

On March 3, 1978 and January 25, 1979 parts of the City of Syracuse, in Onondaga County, New York were designated under section 107 of the 1977 Act as nonattainment with respect to the CO NAAQS. (43 FR 8962 and 44 FR 5119.) In accordance with section 110 of the 1977 Act, New York State submitted a CO SIP for the nonattainment area in 1979. EPA fully approved this SIP as meeting the requirements of section 110 and Part D of the 1977 Act. (See 40 CFR 52.1673, 50 FR 25073.) In its SIP, New York State projected that Onondaga County would attain the CO standard by December 31, 1982. Subsequently, on March 3, 1984, EPA reduced the size of the nonattainment area to the CO hot-spot at the intersection of Almond and East Adams Streets in the City of Syracuse. (49 FR 8439) The hot-spot monitor recorded violations of the standard from 1983 to 1986, and in 1989.

On November 15, 1990, the Clean Air Act (the Act) was amended. (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.) Because the City of Syracuse nonattainment area violated the CO standard in 1989, the Act continued the nonattainment designation of the area and expanded its boundaries to include all of Onondaga County (section 107(d)(1)(C)(i)). Furthermore, it was classified by operation of law as a low moderate CO nonattainment area, which is defined as an area experiencing CO concentrations above the eight-hour standard, but less than 12.7 parts per million (ppm). (See 56 FR 56694 (November 6, 1991), to be codified at 40 CFR 81.333.)

More recently, air quality data collected by the State's air monitoring network indicates that Onondaga County has attained the CO NAAQS. The air quality monitor in downtown Syracuse has not violated the CO standard from 1990 to the present. Therefore, in an effort to comply with the amended Act and to ensure that the standard will continue to be attained, New York submitted a CO maintenance SIP for Onondaga County on November 13, 1992 and requested redesignation of the area to attainment for the CO NAAQS. On January 12, 1993, New York State submitted the report from its public comment period and its response to comments. All four comments supported the redesignation. The comment period was open from November 25 to December 31, 1992 and New York State held a public hearing on December 21, 1992.[1]

[1] For purposes of determining what requirements are applicable for redesignation purposes, EPA believes it is necessary to identify when New York submitted a complete redesignation request. EPA noted in a previous policy memorandum that parallel processing requests for submittals under the amended Act, including redesignation submittals, would not be determined complete. See "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines" Memorandum from John Calcagni to Air Programs Division Directors, Regions I–X, dated October 28, 1992 (Memorandum). The rationale for this conclusion was that the parallel processing exception to the completeness criteria (40 CFR part 51, appendix V, section 2.3) was not intended to extend statutory due dates for mandatory submittals. See Memorandum at 3–4. However, since requests for redesignation are not mandatory submittals under the Act, EPA believes that it must change its policy with respect to redesignation submittals to conform to the existing completeness criteria. Therefore, EPA believes, the parallel processing exception to the completeness criteria may be applied to redesignation request submittals, at least until such time as the Agency decides to revise that exception. Therefore, New York State had submitted a complete redesignation request on November 13, 1992. In the November 13 submittal, the State submitted the maintenance plan, thereby including the final element to make the October 30, 1992 request for parallel processing complete under the parallel processing exception to the completeness criteria. On January 12, 1993, New York State submitted evidence that it held a public hearing on the maintenance plan portion of the

II. Evaluation Criteria

Section 107(d)(1)(E) of the Act lists specific requirements that an area must meet in order to be redesignated from nonattainment to attainment. They are:

1. The area must have attained the applicable NAAQS;
2. The area must have a fully approved SIP under section 110(k) of the Act and the area must have met all relevant requirements under section 110 and Part D of the Act;
3. The air quality improvement must be permanent and enforceable; and
4. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

Section 175A also defines the elements of an approvable maintenance plan. The elements are a base year inventory, a maintenance demonstration for ten years after EPA approves the redesignation request, and contingency measures. The Act requires the state to submit a revised maintenance plan eight years after redesignation. The revised plan must show continued maintenance of the standard for an additional ten years. In the following sections, EPA analyzes New York's submittal with respect to these four redesignation requirements.

III. Review of State Redesignation Submittal

EPA proposes to find that New York's redesignation request for Onondaga County for CO meets the requirements of section 107(d)(3)(E). The following is a brief description of how the State has addressed each of these requirements. A Technical Support Document, on file at the EPA Region II office, contains a more detailed analysis of the submittal.

1. Attainment of the CO NAAQS

New York, in its request for redesignation, used air quality data that show that the CO standard was not violated in 1990 or 1991. These data were collected by New York State in accordance with 40 CFR 50.8, following EPA guidance on quality assurance and quality control and are in the EPA Aerometric Information and Retrieval System (AIRS). These were the data presented by New York State at its public hearing on the redesignation. Since Onondaga County has quality-assured monitoring data showing attainment of the standard over the latest consecutive two-year period, the area has met the first statutory criterion for attainment of the CO NAAQS. In addition, after the State requested redesignation, the State submitted data from 1992 to AIRS. These data are in AIRS and also show no air quality violations.

2. Fully Approved SIP That Meets Applicable Requirements of Section 110 and Part D

2A. New York's 1979 CO SIP

In 1985, EPA fully approved New York's 1979 CO SIP for Onondaga County as meeting the requirements of section 110(a)(2) and Part D of the 1977 Act. The SIP was implemented by New York State and Onondaga County. Emission reductions from the SIP measures, the Federal Motor Vehicle Control Program and traffic flow improvements at the downtown Syracuse hot-spot, are responsible for the attainment of the CO NAAQS.

EPA approved the Onondaga County CO SIP as meeting all 1977 Act requirements. The 1990 Amendments to the Act modified section 110(a)(2) and, under Part D, revised section 172 and added new requirements for certain classes of nonattainment areas.

EPA requires that every state requesting redesignation have a SIP that contains all measures that were due under the 1990 Act before the date on which the State submitted its redesignation request. As noted earlier, Onondaga County was classified as a moderate CO nonattainment area with a design value under 12.7 ppm. The first CO SIP requirements for these areas (e.g., oxygenated fuels) were due for submittal on November 15, 1992. New York submitted its redesignation request on November 13, 1992. Therefore, New York does not have to include the 1990 Act control programs into its CO SIP for Onondaga County for the purposes of redesignation.[2] New York required the use of oxygenated fuels during the CO season of 1992–3 pending EPA approval of the redesignation request.

For the purposes of redesignation, to meet the requirement that the SIP contains all applicable requirements under the Act, EPA has reviewed the SIP and it contains all the measures that were due under the Act prior to the time New York submitted this redesignation request and maintenance plan.

2B. Section 110 Requirements

Although section 110 was amended by the 1990 amendments to the Act, the SIP for Onondaga County still meets the requirements of amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended, see 57 FR 27936 and 23939 (June 23, 1992), many are duplicative of other requirements of the Act. EPA has analyzed the SIP and determined that it is consistent with the requirements of amended section 110(a)(2). This analysis is contained in the Technical Support Document.

2C. Part D Requirements

Because New York submitted the redesignation request for Onondaga County prior to the time any Part D requirements became applicable, i.e., prior to November 15, 1992, these requirements are not due for purposes of redesignation. EPA does note that the State of New York has an EPA-promulgated prevention of significant deterioration program for sources located in attainment areas. (See 40 CFR 52.1689.) This program will apply to Onondaga County immediately upon redesignation to attainment.

Conformity is a process in which projects that affect transportation are approved on the basis of consistency with SIP provisions. Section 176 of the Act requires states to develop transportation/air quality conformity procedures which are consistent with federal conformity regulations and to submit these procedures as a SIP revision. EPA has not promulgated final conformity regulations. However, New York has committed to develop conformity procedures consistent with the final federal regulations. In the redesignation request, New York commits to submit, if necessary, an appropriate SIP revision according to the schedule set forth in the federal regulations. In addition, the Syracuse Metropolitan Transportation Council (SMTC) has resolved to follow EPA conformity guidelines when EPA releases them. The request also contains examples where SMTC has implemented procedures to insure that projects underway, including the 1992–97 Transportation Improvement Program, conform with the existing SIP.

3 Improvement in Air Quality is Due to Permanent and Enforceable Measures

Under the 1977 Act, EPA approved the New York CO SIP for Onondaga County. At that time and now, EPA is satisfied that the rules in the SIP are enforceable. Therefore, the emission reductions achieved as a result of those rules are enforceable. The SIP measures were:

request and at that time parallel processing was no longer applicable; therefore, EPA determined the submittal to be complete under the general completeness criteria of 40 CFR part 51, appendix V, sections 2.1 and 2.2.

[2] Although these requirements were not due for purposes of EPA's action on the State's redesignation request, these requirements are applicable until such time as EPA takes final action on the Onondaga County redesignation request.

Federal Motor Vehicle Control Program (FMVCP), Traffic flow improvements at the downtown Syracuse hot-spot, and Air monitoring at the worst CO hot-spot.

In its redesignation request, New York shows that the SIP measures were implemented. The EPA-approved MOBILE4.1 model shows that the FMVCP and traffic improvements have decreased CO emissions in the downtown area by 57 percent from 1984 to 1991. The large decrease in emissions shows that the SIP is the reason that the CO SIP has caused attainment of the CO NAAQS. The FMVCP, in particular, continues to produce decreases in CO emissions as new, cleaner cars are bought to replace older cars. This continuing program accounts for much of the emission reductions in recent years that eliminated the violations in Onondaga County.

In the redesignation request and the maintenance plan, NYSDEC and SMTC commit to continue implementing the SIP. New York has continued to monitor at the worst CO hot-spot, where the monitor recorded the violations used to designate Onondaga County as nonattainment under the Act and where it now records the subsequent attainment of the CO standard.

4. Review of Maintenance Plan Submittal

In today's notice, EPA is proposing approval of the State's maintenance plan for Onondaga County because EPA finds that New York's submittal meets the requirements of section 175A. If EPA determines after notice and comment that it should give final approval to the maintenance plan, Onondaga County will be able to be redesignated to attainment.

Under section 175A of the Act, a maintenance plan must include an attainment emission inventory, contingency measures and a demonstration of attainment for at least ten years after the area is redesignated.

As for future years, section 175A of the Act requires the State to submit a revised maintenance SIP eight years after EPA takes final action redesignating the area to attainment. If, as EPA anticipates, final action is taken in 1993, the revised maintenance SIP will be due in 2001 and it will provide for maintenance of the CO air quality standard for an additional ten years.

4A. Emissions Inventory

New York submitted comprehensive inventories of CO emissions from point, area, stationary and mobile sources using 1991 as the base year for calculations to demonstrate that the CO standard will be maintained in Onondaga County. Since air monitoring recorded attainment in 1991, 1991 is an acceptable year for the attainment inventory. New York's submittal contains summaries by source category (reproduced in Table 1) and detailed inventory data (contained in the docket).

TABLE 1—ONONDAGA COUNTY CO EMISSIONS

[Tons per day]

	1991	1996	2003
Stationary Point[1]	0	0	0
Stationary Area	31	31	32
Non-road Mobile	38	38	39
On-road Mobile	301	216	134
Total	370	286	205

(Some columns do not total due to independent rounding during unit conversion.)

[1] This category includes only point sources that emit over 100 tons per year of CO. Point sources that emit less than 100 tons per year are included in the Stationary Area source category

Stationary and mobile source inventories were compiled following EPA guidance. Mobile source emission estimates were prepared following the approach recommended by EPA. New York used the Highway Performance Monitor System to estimate vehicle miles traveled and used the MOBILE4.1 emission model for CO emission estimates.

4B. Demonstration of Continued Attainment

SMTC projected CO emissions for Onondaga County, using New York's attainment year inventory, through 2003. EPA anticipates that this will be ten years from the date of the redesignation to attainment, as required by the Act. Table 1 shows that the CO emissions in Onondaga County will decrease throughout the period, so the future emissions estimates do not exceed the attainment year inventory. This shows that the present situation of attainment of the CO standard will be maintained. The decrease in emissions is from the FMVCP and traffic flow improvements at the downtown Syracuse hot-spot. These are programs in the State's 1979 CO SIP and no additional measures are needed to maintain attainment of the air quality standard.

In addition, air modeling for the four CO hot-spots with the greatest potential for violating the CO standard show that concentrations will decrease throughout the period due to the SIP measures. This modeling conforms with EPA guidance and is located in the docket.

4C. Verification of Continued Attainment

As required, the State will track continued attainment during the maintenance period. New York will continue to operate its hot-spot monitor located in downtown Syracuse in accordance with 40 CFR part 58. If the monitor records a concentration above the CO standard, New York will activate its contingency measure.

In addition, New York State will also prepare a revised CO emission inventory every three years. During the revision of the emission inventories, the State will reevaluate the growth factors and other assumptions that were used to develop the attainment and future year inventories.

4D. Contingency Plan

If, despite its best efforts to demonstrate continued compliance with the NAAQS, Onondaga County should exceed the NAAQS, New York has provided ways to detect and eliminate air quality problems. New York State has committed to respond to an exceedance of the CO standard in Onondaga County by implementing a contingency measure, oxygenated fuels, that should eliminate future CO air quality problems. This commitment was included in the redesignation request that was presented for public comment by the State during the comment period ending December 31, 1992.

The downtown Syracuse monitor is the monitor that recorded violations during the 1980s. Two analyses of intersections in Onondaga County, one in the 1980s and a more recent analysis included in the redesignation request, show that the monitor is located at the worst hot-spot in Onondaga County. If this monitor attains the CO standard, it can reasonably be assumed that all of Onondaga County is attaining the CO standard.

If the downtown Syracuse monitor records an exceedance of the CO air quality standard, New York will implement its oxygenated fuels program in the Syracuse Metropolitan Statistical Area as soon as possible, but no later than the beginning of the following CO season. To implement this commitment, the State could use its proposed oxygenated fuels rule, scheduled for adoption this year if it contains a provision to implement the program in the Syracuse Metropolitan Statistical Area if the State monitoring network records an exceedance of the CO standard in Onondaga County. Or the State can adopt an emergency rule to

implement the program (as it did to implement oxygenated fuels during the 1992–3 CO season).

Conclusion

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rule making procedure by submitting written comments to the person and address listed in the **ADDRESSES** section at the beginning of this notice.

Proposed Action

In today's notice EPA proposes to approve the Onondaga County, New York CO maintenance plan because it meets the requirements of section 175A. In addition, EPA is proposing approval of New York's request to redesignate Onondaga County to attainment of the CO standard, subject to final approval of the maintenance plan. EPA is proposing approval because New York has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP or redesignation. Each request for revision to the SIP or redesignation shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities.

5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000 people.

Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. I certify that the approval of the redesignation request will not affect a substantial number of small entities.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 SIP revisions from the requirements of section 3 of Executive Order 12291. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C 7401–7671q.

Dated: June 29, 1993.

William J. Muszynski,

Acting Regional Administrator

[FR Doc. 93–16800 Filed 7–14–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–183, RM–8276]

Radio Broadcasting Services; Sun Valley, Idaho

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Sun Valley Fine Arts Broadcasting requesting the allotment of Channel 298C to Sun Valley, Idaho, as that community's third local aural service. Channel 298C can be allotted to Sun Valley in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 298C at Sun Valley are North Latitude 43–41–48 and West Longitude 114–21–00.

DATES: Comments must be filed on or before August 30, 1993, and reply comments on or before September 14, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Pepper & Corazzini, 1776 K Street, NW, suite 200, Washington, DC 20006 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 93–183, adopted June 18, 1993, and released July 8, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete test of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–16836 Filed 7–14–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket HM–200; Notice No. 93–17]

RIN 2137–AB37

Hazardous Materials in Intrastate Commerce; Correction

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: This document makes certain corrections to a notice of proposed rulemaking proposing amendments to the Hazardous Materials Regulations (HMR) to require that all intrastate shippers and carriers comply with the HMR. This action is necessary to clarify that certain oils, that are subject to oil spill response plan requirements, are not governed by the HMR. This action also clarifies the scope of a delay in the applicability of the proposed rule to certain bulk packagings. These amendments are minor editorial changes that will not impose any new requirements on persons subject to the HMR.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, (202) 366–4401, Assistant Chief Counsel for Hazardous Materials Safety, Office of the Chief Counsel, RSPA, or Jackie Smith, (202) 366–4488, Office of Hazardous Materials Standards, RSPA, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking (NPRM) was published on July 9, 1993, under Docket HM–200 (58 FR 36920). In the NPRM, RSPA proposes to amend the Hazardous Materials Regulations (HMR) to require that all intrastate shippers and carriers comply with the HMR. This document corrects certain editorial errors in that NPRM.

RSPA inadvertently stated in the preamble that certain oils are regulated as hazardous materials under the HMR, when transported in intrastate commerce. The "oils" identified in the preamble refer to those oils that require spill prevention and response plans as implemented under the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990. This inadvertent reference to oil was based on RSPA's interim final rule issued under Docket HM–214 on February 2, 1993 (58 FR 6864), which incorporated oils as hazardous materials subject to the requirements of the HMR. Shortly before publication of the NPRM under Docket HM–200, RSPA issued an interim final rule under Dockets HM–214 and PC–1 (58 FR 33302) that removed the designation as "hazardous materials" of oils that, before February 2, 1993, had not been so designated. Dockets HM–214 and PC–1 established a new part 130 in title 49 CFR solely for implementation of the FWPCA.

RSPA, however, failed to remove the reference to "oil" in the Docket HM–200 preamble explanation of those materials that are currently subject to the HMR when transported in intrastate commerce. Accordingly, the following editorial corrections in the preamble are made: (1) The words "and oil" are removed in the fifteenth and sixteenth lines of the first paragraph following the heading *ANPRM* in the second column on page 36920; (2) the word "oils" is removed from the ninth line of the first paragraph following the heading *State/Federal Relationship* in the first column on page 36921; (3) the word "and" is inserted between the words "flammable cryogenic liquids" and "marine pollutants" in the third line of the second paragraph under the heading *II. Proposed Rule* in the first column on page 36922; and (4) the words ", and oils" are removed from the fourth line of the second paragraph following the heading *II. Proposed Rule* in the first column on page 36922.

Additionally, in the proposed regulatory text under § 171.1(c), RSPA failed to include "marine pollutants" in the list of materials that are excepted from the proposed delay in application of the requirements to bulk packagings operated in intrastate commerce in a State where the non-specification bulk packaging is specifically authorized and the packaging is in compliance with all applicable State requirements.

In consideration of the foregoing, in Docket HM–200, Notice No. 93–17, published in the **Federal Register** on July 9, 1992 (58 FR 36920), make the following corrections:

§ 171.1 [Corrected]

1. On page 36923, in the third column, as proposed in item 3., in § 171.1(c) introductory text, third line, the words "a marine pollutant," are added following the words "a hazardous waste,".

Issued in Washington, DC on July 9, 1993 under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety

[FR Doc. 93–16804 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Convention on International Trade in Endangered Species of Wild Fauna and Flora: Consideration of Amendments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Request for information.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates particular international trade in animal and plant species, which are listed in appendices to this treaty. Any country that is a Party to CITES may propose amendments to Appendices I and II for consideration by the other Parties.

This notice announces plans by the U.S. Fish and Wildlife Service (Service) to consider proposals for submission by the United States to amend Appendices I and II. The Service invites information and comments from the public on animal and plant species that should be considered as candidates for U.S. proposals. Such proposals may concern the addition of species to Appendix I or II, the transfer of species from one appendix to another; or the removal of species from Appendix I or II; or registering operations with Appendix I animal species bred-in-captivity for commercial purposes.

DATES: The Service will consider all information and comments received by September 28, 1993.

ADDRESSES: Comments, information, and questions should be sent to Chief, Office of Scientific Authority; ArlSq room 725, U.S. Fish and Wildlife Service; Washington, DC 20240; fax number 703–385–2276. Express and messenger deliveries should be addressed to the U.S. Fish and Wildlife Service; Office of Scientific Authority; 4401 North Fairfax Drive, room 750; Arlington, Virginia 22203. Comments and other information received will be available for public inspection by appointment, from 8 a.m. to 4 p.m. Monday through Friday, at the above address in Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority (telephone 703–358–1708).

SUPPLEMENTARY INFORMATION:

Background

This is the first in a series of **Federal Register** notices about proposals to amend CITES Appendices I and II to be considered at the ninth regular biennial meeting of the Conference of the Parties. The purpose of this notice is to solicit information that will help the Service to identify: (1) Species that are candidates for addition, removal, or reclassification in those appendices; (2) Ten-Year Review species for which there is no documented evidence of trade in the species; (3) Nomenclatural issues; and (4) Appendix I animal species having

operations that should be submitted as meeting bred-in-captivity criteria, in accordance with CITES resolution Conf. 8.15.

This request is not limited to species occurring in the United States. Any Party may submit proposals concerning animal and plant species occurring anywhere in the world, although the U.S. proposals submitted for recent meetings of the Conference of the Parties have focused on species native to the United States. The Service strongly encourages the submission of well-developed proposals.

CITES (TIAS 8249) regulates import, export, re-export, and introduction from the sea of certain animal and plant species and specimens of them. The term "species" is defined in CITES Article I as "any species, subspecies, or geographically separate population thereof." Each species for which such trade is controlled is included in one of three appendices. The fundamental principles for including species in the appendices are contained in Article II of CITES. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily now threatened with extinction may become so, unless the trade in them is strictly controlled. It also lists other species that must be subject to regulation, in order that the trade in those currently and potentially threatened species may be brought under effective control. Such listings frequently are required because of difficulty in distinguishing specimens of currently or potentially threatened species from other species in trade. Appendix III includes species that any Party country identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of the other Parties in controlling the trade. The present notice concerns only Appendices I and II.

For animals in Appendix I or II and plants in Appendix I, any readily recognizable part or derivative thereof is automatically included when the species is listed in the appendix, by the language in CITES. Most parts and derivatives of the plants listed in Appendix II are also included, with certain standard exclusions, by amendments and resolutions at several meetings of the Conference of the Parties. The parts and derivatives usually not included (i.e., not regulated) for Appendix II plants are: Seeds, spores, pollen (including pollinia), tissue cultures, and flasked seedling cultures. Also see 50 CFR 23.23(d) for other exclusions and limitations. Further guidance on criteria for adding, transferring, or deleting species with respect to the appendices is contained in several resolutions available from the Office of Scientific Authority (see the ADDRESSES section).

The Parties have adopted a format for proposals to amend Appendix I or II (resolution Conf. 2.17), in order to ensure that certain types of information are provided. The format is as follows:

A. Proposal

B. Proponent (CITES Party country)

C. Supporting Statement

1. Taxonomy

11. Class.
12. Order.
13. Family.
14. Genus, species, or subspecies, including author(s) and year, and checklist or authority being followed to recognize the species.
15. Common name(s), when applicable, including French and Spanish or other common names (if known).
16. Code numbers, when applicable; e.g., International Species Inventory System (ISIS) number.

2. Biological Data

21. Distribution (current and historical).
22. Population (estimates and trends, and other relevant information).
23. Habitat (trends).

3. Trade Data

31. National utilization.
32. Legal international trade.
33. Illegal trade.
34. Potential trade threats.
341. Live specimens.
342. Parts and derivatives.

4. Protection Status

41. National.
42. International.
43. Additional protection needs.

5. Information on Similar Species (Addressing the Issue of Similarity of Appearance Where Appropriate

6. Comment From Countries of Origin (Other Than Proponent)

7. Additional Remarks

8. References (Published Literature and Other Documents)

Future Actions

The next regular meeting of the Conference of the Parties is planned for the United States within the last quarter of 1994. Any proposals to amend Appendix I or II at the next meeting must be submitted by the United States to the CITES Secretariat at least 150 days prior to the meeting. Therefore as part of the consultation process with countries within which the proposed species occurs (in accordance with resolution Conf. 8.21), the Service plans to send any such proposals to those CITES countries for comment at least 60 days prior to sending them to the Secretariat.

The Service plans to publish a **Federal Register** notice in the last quarter of 1993 or early 1994 to announce tentative species proposals for possible submission by the United States, and to invite information and comments on them. A subsequent notice in 1994 will announce the Service's final decisions and those species proposals submitted by the United States to the CITES Secretariat. In future notices, the Service also will address the development of U.S. negotiating positions on the proposals and issues submitted by other Party countries to amend Appendices I and II.

Persons having information and comments on species that might be potential candidates for CITES proposals are urged to contact the Service's Office of Scientific Authority. Submitted proposals should be in the format for proposals provided above, and well developed.

This notice was prepared by Drs. Henry L. Short and Bruce MacBryde, Office of Scientific Authority, under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Treaties.

Dated: July 6, 1993.

Bruce Blanchard,

Acting Director.

[FR Doc. 93–16697 Filed 7–15–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 134
Thursday, July 15, 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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Third Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by Public Law 96–177, Public Law 100–418, and Public Law 100–449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), which may be imported, other than products of Canada, into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in Harmonized Tariff Schedule of the United States subheadings 02.01.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1993 by section 2(c) as adjusted under section 2(d) of the Act.

As announced in the Notice published in the **Federal Register** on January 6, 1993 (58 FR 536), the estimated aggregate quantity of meat articles other than products of Canada prescribed by section 2(c) as adjusted by section 2(d) of the Act for calendar year 1993 is 1,144.7 million pounds.

In accordance with the requirements of the Act, I have determined that the third quarterly estimate of the aggregate quantity of meat articles other than products of Canada which would, in the absence of limitations under the Act, be imported during calendar year 1993 is 1,259.1 million pounds.

Done at Washington, DC this 29th day of June, 1993.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 93–16749 Filed 7–14–93; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Exemption of Scott Fire Salvage Timber Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber project designed to recover fire-damaged timber is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: In August 1992, the Scott Fire on the Nez Perce National Forest burned about 6,000 acres. In September 1992, the Forest Supervisor proposed a salvage timber sale project to recover dead and damaged sawtimber from within the perimeter of the fire. The Forest Supervisor has determined, through analysis documented in the Scott Fire Timber Salvage Environmental Assessment (EA) and Decision Notice, that good cause exists to expedite these actions: (1) Recover damaged resources, (2) rehabilitate National Forest System lands, and (3) adopt a site-specific Forest Plan amendment.

EFFECTIVE DATE: Effective on July 15, 1993.

FOR FURTHER INFORMATION CONTACT: Robert F. Abbott, District Ranger; Salmon River Ranger District, Nez Perce National Forest; HC 01, Box 70; White Bird, ID 83554; Telephone 208–839–2211.

SUPPLEMENTARY INFORMATION: The Scott fire burned approximately 6,000 acres in August 1992. About 1,000 acres of this total were within the Gospel-Hump Wilderness. Most of the tree mortality and damage occurred on about 2,700 acres outside the wilderness. The affected areas outside the wilderness are located in Management Areas 12, 16, and 20, which are designated as suitable timberland in the Nez Perce Forest Plan (October 1987).

In September 1992, the Forest Supervisor proposed the salvage of commercial sawtimber on lands located outside the wilderness that were affected by the fire. This proposal was designed to meet the following needs: (1) Capture as much of the economic value as possible; (2) reduce the food source for insects, and reduce or eliminate the potential for live trees to be impacted by the increase in insect populations; (3) reduce potential fuel levels; and (4) manage the area to move as rapidly as possible toward the re-establishment of old-growth habitat components.

An interdisciplinary team was convened, and scoping began in 1992. Eight environmental issues were identified through scoping, and these issues were the basis for the environmental analysis disclosed in the EA. Five alternatives were analyzed including no treatment (no action) and a salvage and rehabilitation proposal (proposed action). Five other alternatives were considered but dismissed from detailed consideration.

The selected alternative would salvage approximately 14.2 MMBF of dead and damaged timber from approximately 1,493 acres. All logging is to be done from existing system roads; however, about ½ mile of temporary road is required and will be obliterated and returned to contour after use. Most of the yarding is to be done with helicopters, although some cable and skyline yarding are also planned.

Achieving the objective of rapid re-establishment of old-growth habitat components requires a site-specific amendment to the Nez Perce Forest Plan. This amendment is permitted by 36 CFR 219.10(f) and Section X of the Forest Plan Record of Decision. The amendment is necessary because the Forest Plan prohibits timber harvest in areas assigned to Management Area 20 (old growth) during the first decade of Forest Plan implementation. Amendment 17 is proposed because the analysis of the Scott Fire Project shows that harvest of some fire-damaged trees in areas assigned to this Management Area can reduce future fire and insect risks to the remaining fire-damaged

trees. Competition between the remaining fire-damaged trees for survival can also be reduced if some harvest is allowed.

The salvage timber project is designed to accomplish these objectives as quickly as possible to minimize the risk of insect infestations, to reduce fuel loading, and to recover merchantable sawtimber before it deteriorates in value and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being carried out. Under this regulation, the following types of decisions may be exempted from administrative appeal:

> Decisions related to the rehabilitation of National Forest System lands and recovery of forest resources resulting from * * * wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Scott Fire Salvage Timber Sale EA and in the Nez Perce Forest Supervisor's Decision Notice, I have determined that good cause exists to exempt the decision to implement this project and the decision to adopt Forest Plan Amendment No. 17 from administrative review. Therefore, upon publication of this notice, the Scott Fire Salvage Timber Sale and Nez Perce Forest Plan Amendment No. 17 will not be subject to review under 36 CFR part 217.

Dated: July 12, 1993.

Christopher D. Risbrudt,

Deputy Regional Forester, Northern Region.

[FR Doc. 93–16870 Filed 7–14–93; 8:45 am]

BILLING CODE 3410–11–M

Enzymatic Deinking of Recycled Fibers; Intent to Form a Consortium

Program Description

Purpose

The USDA, Forest Service, Forest Products Laboratory (FPL) is seeking industrial partners to form a consortium dedicated to the enzymatic deinking of recycled fibers under the authority of the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710a).

An industrial partner may be any Federal Agency, university, private business, nonprofit organization, research or engineering entity, or combination of the above.

A summary of the proposed research and development is as follows:

(a) Microbial cellulases and xylanases, applied to recycled fibers during high consistency maceration, facilitate removal of toners by subsequent flotation and washing stages. Under optimal conditions, the enzymes are more efficient than conventional deinking chemicals, and they do not create problems in waste water clean up. Initial studies have identified several commercial enzyme preparations that could be competitive with current chemical deinking technology.

(b) Further development could proceed along several lines:

(1) Enzymes could be formulated with appropriate deinking chemicals to obtain synergistic activity;

(2) More effective enzymes could be identified;

(3) The active components of the enzymes could be better defined to improve efficiency and reduce cost of enzyme production;

(4) Process engineering control technologies could be developed that would improve the efficacy of enzyme application; and

(5) Enzyme treatment could be developed that would shorten fiberization times, improve drainage, and enhance strength properties as they facilitate deinking.

(6) Other proposed research topics which may emerge from consultation with consortium members.

(c) We propose to accomplish these objectives by conducting research within an industrial consortium, the consortium members consisting of an enzyme manufacturer, a supplier of deinking chemicals, a process engineering company, and a manufacturer of deinked recycled paper pulp. Information and expertise will be shared in order to develop the most practicable technology in the least amount of time.

(d) Initial studies would focus on identifying critical enzyme performance characteristics and scaling up processing technology to plant trials. The primary objectives of this consortium shall be to develop a fundamental understanding of the mechanisms of enzymatic deinking to enable rapid commercial development.

A meeting of potential industrial partners will be held on August 24, 1993, to discuss the formation of the consortium, the present status of the technology, and the anticipated technology to be developed under the auspices of the consortium. Prior to that meeting, a Proprietary Information Disclosure Agreement (PIDA) will be required to be executed by each organization and/or individual, as applicable, attending the meeting. Copies of the PIDA for execution may be obtained at the address shown below.

Proposals will be invited at the meeting for each of the several lines of further development. They will be due at the time and address shown below. Four panels will be instituted comprised of persons knowledgeable in the field; they will evaluate the proposals for each of the four lines of development (a through d, above) and will recommend the most responsive proposals to the Grants and Agreements Officer shown below.

The Grants and Agreements Officer will negotiate and enter into Cooperative Research and Development Agreements (CRADA)s with the selected proposers. The CRADAs will provide for statements of the mutuality of interest of the parties, the actions to be performed by the parties which contribute to the research and development, and the disposition of intellectual property rights arising from the research. It is anticipated that each CRADA will provide the industrial partner with a right of first refusal to negotiate a nonexclusive, a partially exclusive, or an exclusive license to the technology derived from the research under the CRADA. A copy of a sample CRADA may be obtained by writing to the address below.

Proposals must be received by the close of business September 27, 1993, by the Grants and Agreements Officer, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398. Any proposals received after that time will be returned unopened to the proposer.

Neither the approval of any proposal nor the execution of any CRADA commits or obligates the United States in any way to provide further support of a project or any portion thereof.

Done at Madison, WI, on July 7, 1993.

John G. Bachhuber,

Grants and Agreements Officer.

[FR Doc. 93–16799 Filed 7–14–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 930664–3164]

MEGA Center Applications: Los Angeles Metropolitan Statistical Area With Selected Services Throughout the States of Alaska, Arizona, California, Hawaii, Nevada, Oregon, and Washington

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications for its Los Angeles Minority Enterprise Growth Assistance (MEGA) Center. The total cost of performance for the first budget period (15 months) from November 1, 1993 to January 1, 1995, is estimated at $3,641,972, contingent upon the availability of Federal funding. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The Los Angeles MEGA Center will provide service in the Los Angeles Metropolitan Statistical Area with selected services throughout the States of Alaska, Arizona, California, Hawaii, Nevada, Oregon, and Washington.

The funding instrument for this project 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 purpose of the MEGA Center is to provide integrated business development services to minority entrepreneurs in areas of high unemployment, underemployment or distress, and areas of Los Angeles that the President has declared a disaster as a result of the civil disturbances in Los Angeles. In addition to basic business assistance services, the center will provide specialized assistance in the areas of Franchise Development, Construction Assistance and Bonding, Capital Development, International Trade, Technology Assistance, and Tourism Development. Each one of these specialized business areas are considered functional components, and serve as integral parts of the center. The MEGA Center is, therefore, equipped to meet the more complex business needs of the minority business community. This, in turn, is expected to create growing and more profitable ventures resulting in increased job opportunities.

Applications will be evaluated 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 each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The Los Angeles MEGA Center shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the Los Angeles MEGA Center may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MEGA Center will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MEGA Center's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is August 31, 1993. Applications must be postmarked on or before August 31, 1993.

ADDRESSES: MBDA Los Angeles District Office, SFRO, 9660 Flair Drive, suite 455, El Monte, CA 91731, (818) 453–8636.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Officer, telephone (415) 744–3001.

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. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. A pre-bid conference will be held on July 30, 1993 at 10 a.m. at the MBDA Los Angeles District Office. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at lease one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty for financial integrity.

Award Termination—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 award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MEGA Center work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in the 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirement and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26 § 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR part 26, § 605) are subject to 15 CFR part 26, subpart F, "Government Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, § 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applications/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 Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(Catalog of Federal Domestic Assistance 11.800 Minority Business Development)

Dated: July 12, 1993.

Loretta Young,

Acting Deputy Director, Minority Business Development Agency.

[FR Doc. 93–16809 Filed 7–14–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Modernization Transition Committee

AGENCY: National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of establishment.

SUMMARY: The Department of Commerce announces the establishment of the Modernization Transition Committee on July 8, 1993, in accordance with Public Law 102–567, section 707 (Weather Service Modernization Act (the Act)). The Secretary of Commerce has determined that the Committee is in the public interest in connection with the modernization of the National Weather Service (NWS) and the performance of duties imposed on the Department by law.

FOR FURTHER INFORMATION CONTACT: Senator Raygor, TPO, 1325 East-West Highway # 17228, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION: The Act requires NOAA to consult with a 12-member Modernization Transition Committee before publishing the modernization criteria required by section 704 of the Act. These are the criteria for commissioning and decommissioning new weather observation systems and for certifying that closing, consolidating, automating, or relocating a field office of the NWS will not result in any degradation of services.

The Committee will consist of 12 members chosen to assure a balanced representation of interest and viewpoints. The Secretary will appoint seven members from civil defense and public safety organizations, news media, any labor organization certified by the Federal Labor Relations Authority as an exclusive representative of National Weather Service Employees, meteorological experts, and private-sector users of weather information, such as pilots and farmers. Additionally, five members representing agencies and departments of the U.S. Government that are responsible for providing or using weather services, including, but not limited to, the National Weather Service, the Department of Defense, the Federal Aviation Administration, and the Federal Emergency Agency, shall be appointed to the Committee.

This Committee will be renewed July 8, 1995.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 93–16750 Filed 7–14–93; 8:45 am]

BILLING CODE 3510–12–M

Finding of No Significant Impact—WSR–88D and Supplemental Environmental Assessment

AGENCY: NEXRAD Joint System Program Office, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of availability.

SUMMARY: The NEXRAD Joint System Program Office (JSPO) announces the availability of the Supplemental Environmental Assessment (SEA) of the effects of electromagnetic radiation from the WSR–88D and the Finding of No Significant Impact (FONSI) of that study.

FOR FURTHER INFORMATION CONTACT: NOAA, SP01, 1325 East-West Highway, #15170, Silver Spring, Maryland, 20910, Attn: Mr. David Smiley, Deputy Program Manager.

SUPPLEMENTARY INFORMATION: The WSR–88D Program is being implemented by the JSPO, formed by the U.S. Departments of Commerce, Transportation, and Defense (DOC, DOT, and DOD). The WSR–88D Program consists of the design, siting, construction, and installation of 116 National Weather Service (NWS) radars in the continental United States; 14 Federal Aviation Administration (FAA) radars in Alaska, Hawaii, and the Caribbean; and 22 DoD radars in the continental United States (the FONSI does not apply to WSR–88D units being installed by DoD outside the U.S.).

The SEA updates portions of the environmental analysis included in the Programmatic Environmental Impact Statement (PEIS) published by the NEXRAD JSPO in 1984. The SEA focuses on the potential for electromagnetic radiation from the WSR–88D to result in significant biological effects. In extending the earlier analysis, the SEA used current radar performance specifications and field measurements made at the WSR–88D Operational Support Facility to recalculate and verify the strength of the electromagnetic field created by the radars during operation. The SEA also addressed the potential biological effects from exposure to the electromagnetic field created by power lines serving each radar. Finally, the document reexamined the potential for the creation of hazards to humans

through electromagnetic interference (EMI) with cardiac pacemakers, electroexplosive devices, and fueling operations.

The SEA review of research since 1984 found no scientific evidence that exposure to WSR–88D radio frequency radiation (RFR) will result in adverse biologic impacts.

Similarly, the review found that adverse effects are not expected to result from exposure to WSR–88D power-line fields. Finally, as concluded in 1984, no hazards will be created for operation of cardiac pacemakers, use of electroexplosive devices, or fuel handling. The JSPO concludes that the finding of the 1985 Record of Decision (ROD) remains valid—implementation of the WSR–88D Program will not cause significant adverse impacts on human health or hazards to electromagnetic systems. Construction and operation of the WSR–88D system will not cause significant adverse impacts on the human environment.

All practical means to avoid or minimize environmental effects will be undertaken. In keeping with the recommendation of the 1985 ROD, the JSPO will continue the current practice of preparing environmental assessments for individual WSR–88D sites. Environmental sampling and measurement will be conducted, as necessary, at specific sites to analyze possible impact levels. During the environmental review of specific WSR–88D sites, Federal, State, and local environment and resource protection agencies will be consulted.

Dated: June 29, 1993.

Robert M. Valone,

Director, Systems Program Office.

[FR Doc. 93–16798 Filed 7–14–93; 8:45 am]

BILLING CODE 3510–12–M

Florida Keys National Marine Sanctuary Advisory Council; Open Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Florida Keys National Marine Sanctuary Advisory Council; notice of open meeting.

SUMMARY: The Council was established in December 1991 to advise and assist the Secretary of Commerce in the development and implementation of the comprehensive management plan for the Florida Keys National Marine Sanctuary.

TIME AND PLACE: July 29 and 30, 1993, from 9 a.m. until adjournment. The meeting location will be at the Hawks Key Resort, Mile Marker 61, Route 1, Duck Key, Florida.

AGENDA:

1. Solicit public comment on Florida Keys National Marine Sanctuary management alternatives.
2. Discussion and vote on recommendation of a preferred alternative.

PUBLIC PARTICIPATION: The meeting will be open to public participation. The first day will be devoted to oral comments and questions. Seats will be set aside for the public and the media. Seats will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT: Pamala James at (305) 743–2437 or Ben Haskell at (301) 713–3137.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: July 9, 1993.

Frank Maloney,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 93–16754 Filed 7–14–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit (P466a).

SUMMARY: On April 20, 1993, notice was published in the **Federal Register** (58 FR 21285) that an application had been filed by Mr. Scott D. Kraus, Edgerton Research Laboratory, New England Aquarium, Central Wharf, Boston, MA 01220–3309 for authorization to harass up to 20,000 harbor porpoise (*Phocoena phocoena*) annually during the conduct of underwater acoustic playback experiments, over a three year period, in the inshore and coastal waters of Maine.

Notice is hereby given that on July 9, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), NMFS issued a permit to the above applicant to harass up to 1000 harbor porpoise annually as described above, subject to certain conditions set forth therein.

ADDRESSES: The permit and associated documents are available for review upon written request or by appointment, in the following offices.

Office of Protected Resources, NMFS, NOAA, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289); and

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200).

Dated: July 9, 1993.

William Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–16756 Filed 7–14–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Independent Scientific Peer Review of the Catch Limit Algorithm of the International Whaling Commission's Revised Management Procedure

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

ACTION: Notice of request for nominations.

SUMMARY: At its 1992 Annual Meeting, the International Whaling Commission (IWC) adopted a mathematical procedure that could be a basis for calculating catch limits for commercial whaling. This notice seeks nominations of qualified scientists from outside NMFS to participate in an independent scientific peer review of the procedure.

DATES: Nominations should be received by NMFS by August 30, 1993.

ADDRESSES: Nominations for the peer review panel should be sent to Dr. Michael P. Sissenwine, Senior Scientist for Fisheries, National Marine FIsheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Steven Swartz (301–713–2239).

SUPPLEMENTARY INFORMATION: At its 1992 Annual Meeting, the Scientific Committee of the IWC unanimously recommended that the Commission adopt a specific Revised Management Procedure (RMP) and its mathematical algorithm for calculating catch quotas for commercial whaling—the "catch limit algorithm" or CLA. The Commission accepted the advice of the Scientific Committee and adopted the RMP in principle. At the same time it affirmed that commercial whaling could not be permitted unless catch limits have been calculated by the Scientific Committee and approved by the Commission, and it set forth a series of additional steps that need to be taken before any catch quotas are calculated.

The RMP was developed to satisfy three criteria established by the IWC: (1) To ensure the highest possible continuing yield, (2) to ensure that a stock does not become depleted by

harvesting, and (3) to ensure stability in the catch quotas. Of these three criteria, the IWC chose to put greatest emphasis on criteria number (2).

The Scientific Committee spent more than 5 years in developing the RMP and its CLA. Several possible procedures were proposed, and each was evaluated with an extensive series of computer simulations. The current management scheme (the New Management Procedure) was also evaluated; it did not perform as well as any of the proposed procedures. In 1991, the Commission selected one procedure as a base for further development, and in 1992, when the Scientific Committee resolved the main difficulties in the practical implementation of the procedure from a scientific point of view, the Commission adopted it in principle. Final documentation of the CLA was completed at the 1993 Annual Meeting of the IWC's Scientific Committee.

On May 5, 1993, the Secretary of Commerce announced the United States' opposition to the resumption of commercial whaling, but said the United States will continue to work within the IWC to perfect the Revised Management Scheme, which includes the RMP and the CLA. As part of the U.S. evaluation of the proposed procedure, NMFS has decided to conduct an independent scientific peer review of the RMP and its CLA before making any final judgment about the efficacy of the procedure. This independent scientific peer review is intended to examine the CLA and the results of simulation trials conducted by the IWC's Scientific Committee to assess the performance and applicability of the RMP as a management tool.

In addition, the review will address the data requirements for an external, fishery-independent monitoring program to assess the performance of the RMP, as was discussed by the IWC at its 1993 Annual Meeting in Kyoto, Japan.

The review will not address any other questions related to commercial whaling or whaling policy, including whether or not commercial whaling should be authorized by the IWC based on CLA-derived catch quotas or any other basis. To be most valuable, the review will be conducted by scientists with demonstrated expertise in quantitative science from outside NMFS.

The review panel is expected to convene for 1 week in Woods Hole, MA, in late October 1993.

By this notice, NMFS is soliciting nominations of scientists to serve on the peer review panel. To qualify, nominees must have demonstrated an exceptional expertise as scientists in one or more of the following areas: Quantitative population dynamics, resource management modeling, and/or applied decision theory. They must also have had no prior involvement in IWC-related issues.

Dated: July 8, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–16801 Filed 7–14–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act 44 U.S.C. chapter 35).

Title and Applicable Form: Validation of Public or Community Service Employment Performed by Retired Personnel Retired Under the Temporary Early Retirement Authority (TERA) for Increased Retirement Compensation; DD Form 2676

Type of Request: Expedited Submission-Approval Date Requested: 30 days after publication in the Federal Register

Average Burden Per Response: 10 minutes

Response Per Respondent: 1

Number of Respondents: 4,800

Annual Burden Hours: 800

Annual Responses: 4,800

Needs and Uses: Public Law 102–484, section 4464 requires the Department of Defense to develop policy and procedures to validate and credit increased retirement compensation for qualifying public and community service employment performed by retired personnel of the Armed Forces under the early retirement program

Affected public: Individuals or households, State or local governments, non-profit institutions, and small businesses or organizations

Frequency: On occasion and annually thereafter

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Edward C. Springer, Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce, Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: July 12, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–16774 Filed 7–14–93; 8:45 am]

BILLING CODE 5000–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title, Applicable Form, and OMB Control Number: Health Insurance Claim Form; HCFA–1500; OMB Number 0720–0001

Type of Request: Revision

Number of Respondents: 7,800,000

Responses Per Respondent: 1

Annual Responses: 7,800,000

Average Burden Per Response: 15 minutes

Annual Burden Hours: 1,950,000

Needs and Uses: The information collected by this form is used by OCHAMPUS to determine reimbursement for health care services or supplies rendered by individual professional providers to CHAMPUS beneficiaries. The requested information is used to determines beneficiary eligibility, appropriateness and cost of care, other health insurance liability, and whether services received are benefits. Use of this form continues the OCHAMPUS commitment to use the national standard claim form for reimbursement of services and supplies provided by individual professional providers

Affected Public: Individuals or households, State or local governments, businesses of other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations, and Federal agencies or employees

Frequency: On occasion

Respondents's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Joseph F. Lackey, Written comments and recommendations on the proposed information collection should be sent to Mr. Lackey at the Office of Management and Budget, Desk Officer for DoD, room 3002, New Executive Office Building, Washington, DC 20503

DOD Clearance Officer: Mr. William P. Pearce, Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302

Dated: July 12, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 93–16773 Filed 7–14–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Renewal of the Strategic Environmental Research & Development Program Scientific Advisory Board

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Strategic Environmental Research & Development Program Scientific Advisory Board (SERDP SAB) has been renewed by the Department of Defense (DoD). Authorization for the SERDP SAB is contained in Section 2904, Title 10 U.S.C.

The SERDPS SAB will provide advice and recommendations to the Secretary of Defense and the Secretary of Energy, via the SERDP Council, on environmental research and development activities. This will include matters involving technologies, research, projects, programs, activities, and funding considerations where appropriate, within the scope of the SERDP.

The SERDP SAB will continue to be comprised of between six and thirteen members, as specified in Title 10, who are eminent in the fields of basic sciences, engineering, ocean and environmental sciences, education, research management, international and security affairs, health sciences, physics, and social sciences. Due regard will be given to women candidates and other minority groups. Efforts will also be made to ensure that the membership is well-balanced in terms of the functions to be performed and the interest groups represented.

For additional information regarding the SERDP SAB, please contact Dr. Joseph Osterman, telephone: 703–695–9759.

Dated: July 12, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–16776 Filed 7–14–93; 8:45 am]

BILLING CODE 5000–04–M

Defense Intelligence Agency Scientific Advisory Board Meeting

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board Panel on Intelligence Support to OSD Offices has been scheduled as follows:

DATES: 19 July 1993 (0900–1700).

ADDRESSES: Monday, 19 July 1993, The Defense Intelligence Analysis Center, Building 6000, Bolling Air Force Base, Washington, DC 20340–1328.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–1328, (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical issues and advise the Director of Policy Support.

Dated: July 12, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–16775 Filed 7–14–93; 8:45 am]

BILLING CODE 5000–04–M

Militarily Critical Technologies List

AGENCY: Under Secretary of Defense (Acquisition).

ACTION: Notice.

SUMMARY: The 1992 Militarily Critical Technologies List (MCTL) is now available. The 1992 MCTL was prepared by the Under Secretary of Defense for Acquisition as required by the Export Administration Act. The Act directs that the Secretary of Defense shall bear primary responsibility for developing a list of Militarily Critical Technologies.

FOR FURTHER INFORMATION CONTACT:

Dr. Joe P. Golden or Mr. Ib A. Berg, Office of the Deputy Under Secretary (International Programs) Telephone: (703) 695–9777 or (703) 614–4777; FAX: (703) 693–0128.

SUPPLEMENTARY INFORMATION: The List was produced by working groups of technical experts from the Government, the Military, Industry and Academia. The experts conducted detailed analyses of each of 15 technologies which DoD assesses to be critical to the development, production and use of military capabilities of significant value to potential adversaries. The 1992 MCTL supersedes the October 1989 MCTL.

The 1992 MCTL has been expanded to identify technologies of importance to the control of the proliferation of weapons of mass destruction and their missile delivery systems. Also new are summary estimates of the general status of foreign capabilities in the MCTL technology areas.

While the MCTL does not replace existing export control lists or other international guidelines, it supports development of export control policy, technology release guidelines, and non-proliferation policy (to include treaty verification). It is the basis for specific proposals for controls to be implemented by CoCom, other multilateral control regimes, or U.S. mechanisms such as the Commerce Control List (CCL) and the U.S. Munitions List.

The MCTL is available to Government agencies and their contractors in paper copy or on diskette from the Defense Technical Information Center (DTIC). Send mail requests to: DTIC, Building 5, Cameron Station, Alexandria, VA 22304–6145; FAX requests to (703) 274–9307; and telephone requests to: (703) 274–7633

The general public can get information on obtaining copies of the MCTL from the National Technical Information Service, Springfield, VA 22161; FAX inquiries (703) 321–8547; and telephone inquiries to (703) 487–4650.

Dated: July 12, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–16777 Filed 7–14–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Security Seals for Transportation of DOD Cargo

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC) is evaluating all security seals that can be used to secure sensitive Department of Defense (DOD) cargo in-transit. Such shipments include arms, ammunition and explosives (AA&E), hazardous material, and classified material.

DATES: Suggested seals of correspondence must be submitted by September 13, 1993.

ADDRESSES: Submit seals or correspondence to Headquarters, Military Traffic Management Command, ATTN: MTOP-S/Darryl Richardson, 5611 Columbia Pike, Falls Church, VA 22041–5050; telephone (703) 756–2030 or DSN 289–2030.

SUPPLEMENTARY INFORMATION: MTMC invites manufacturers and or designers of security seals to submit their seals for testing to the Military Traffic Management Command. At least ten (10) seal samples are required. Once received, seals will be forwarded to a testing agency. Once the agency has tested the seals, their evaluations/recommendations will be provided to MTMC. Based on these evaluations, MTMC will consider seals for possible inclusion in the MTMC-approved cargo seal listing. This listing is provided to all MTMC-approved commercial carriers and DOD agencies charged with transporting sensitive DOD cargo. MTMC also encourages seal manufacturers and designers to provide recommendations for cargo seal standards.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–16795 Filed 7–14–93; 8:45 a.m.]

BILLING CODE 3710–08–M

Patents Available for Licensing

AGENCY: U.S. Army Aviation and Troop Command, DOD.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or non-exclusive licenses under the following patents. Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Issued patent	Title	Issue date
5,220,909	Self Heating Individual Meal Module.	06/22/93
5,205,021	Quick Release Buckle Assembly.	04/27/93
5,169,554	Enzyme Detergent Formulation and Methods of Detoxifying Toxic Organophosphorus Acid Compounds.	12/08/92
5,209,436	Radial Reefing Means for use in Packing and Opening a Parachute Canopy in a Controlled Manner.	05/11/93
5,089,298	Synergistic Effect of Amylopectin-Permethrin in Combination on Textile Fabrics.	02/19/92

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans, Natick Research, Development and Engineering Center, Office of Research and Technology Applications on 508–651–5296 or write to U.S. Army Natick Research, Development and Engineering Center, Kansas Street, STRNC–EML (Robert Rosenkrans), Natick, MA 01760–5014.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–16713 Filed 7–14–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency concerning Peaceful Application of Atomic Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: S-IAEA-165, for the sale of 57.481 grams of uranium, containing 53.527 grams of the isotope uranium-235 (93.12 percent enrichment) and 5.003 grams of uranium, containing 0.991 grams of the isotope uranium-235 (19.81 percent enrichment) to the International Atomic Energy Agency, Siebersdorf, Austria, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on July 12, 1993.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 93–16827 Filed 7–14–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF87–59–007]

Panther Creek Partners; Amendment to Filing

July 9, 1993.

On July 7, 1993, Panther Creek Partners tendered for filing a supplement to its filing in this docket.

The supplement primarily pertains to the technical aspects of its waste-fueled small power production facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status 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. All such motions or protests must be filed by July 28, 1993, and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16746 Filed 7–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER93-743-000, et al.]

Tampa Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 8, 1993.

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Co.

[Docket No. ER93-743-000]

Take notice that on June 29, 1993, Tampa Electric Company (Tampa Electric) filed a notice of cancellation of the Letter of Commitment between Tampa Electric and Oglethorpe Power Corporation (Oglethorpe) under interchange Service Schedule G (Back/Reserve Interchange Service).

Tampa Electric states that Oglethorpe has requested termination of the Letter of Commitment effective June 1, 1993. In keeping with Oglethorpe's request, Tampa Electric requests that the cancellation be made effective as of that date.

Copies of the filing have been served on Oglethorpe and the Public Service Commissions of Georgia and Florida.

Comment date: July 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Idaho Power Co.

[Docket No. ER93-766-000]

Take notice that on July 2, 1993, Idaho Power Company (IPC) tendered for filing the Agreement for the Purchase and Supply of Power and Energy between Idaho Power Company and Portland General Electric Company. The Agreement has a term of three years and Idaho Power has requested an effective date for this rate schedule of September 1, 1993.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Metropolitan Edison Co.

[Docket No. ER93-718-000]

Take notice that on June 21, 1993, York Haven Power Company, Reading, Pennsylvania tendered for filing a proposed change in its rate schedule for the sale of power to its parent, Metropolitan Edison Company, from FPC licensed Project No. 1888. This change in rates is proposed to be effective for deliveries of power and energy on or after September 1, 1993 . The proposed changes would decrease revenues from jurisdictional sales and service by $193,197 based on the 12-month period ending August 31, 1993.

York Haven states that under the affected rate schedule, all of the power and energy from Project No. 1888 is sold to Metropolitan Edison on a rate based upon York Haven's cost and expenses in generating and transmitting such power and energy. Under its agreement with Metropolitan Edison, York Haven is entitled to the same return on net investment as was most recently allowed Metropolitan Edison by the Pennsylvania Public Utility Commission. That Commission on January 21, 1993 allowed a rate of return to Metropolitan Edison of 9.59 percent. That Commission's Opinion and Order on Reconsideration, entered April 15, 1993, affirmed a rate of return of 9.59 percent. This filing is submitted to reflect that rate of return. York Haven indicates that its current rate of return is 11.03 percent under its rate schedule. Copies of the filing have been mailed to Metropolitan Edison and Pennsylvania Public Utility Commission.

Comment date: July 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER93-762-000]

Take notice that on July 2, 1993, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement to provide interruptible transmission service for Potomac Electric Power Company (PEPCO).

Con Edison states that a copy of this filing has been served by mail upon PEPCO.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER93-516-000]

Take notice that PacifiCorp, on June 30, 1993, tendered for filing, in accordance with 18 CFR 35.13(a)(2) of the Commission's Rules and Regulations an amendment to its March 30, 1993 filing of PacifiCorp's FERC Electric Tariff, First Revised Volume No. 3 ("Tariff").

PacifiCorp respectfully requests pursuant to § 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that this filing be accepted for filing effective on June 1, 1993. This date being sixty (60) days from the filing date of PacifiCorp's March 30, 1993 letter.

Copies of this filing were supplied to the Public Utility Commission of Oregon.

Comment date: July 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Public Service Corp.

[Docket No. ER93-754-000]

Take notice that on July 1, 1993, Wisconsin Public Service Corporation (WPS) tendered for filing two letters supplementing its Partial Requirements and Pattern Service Agreement with Consolidated Water Power Company (CWPCo). These letters relate to CWPCo's firm demand nominations for the period June 1, 1993 through December 31, 1996.

The Company states that it has served copies of this filing on CWPCo and the Public Service Commission of Wisconsin.

Comment date: July 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Public Service Corp.

[Docket No. ER93-755-000]

Take notice that on July 2, 1993, Wisconsin Public Service Corporation (WPS) tendered for filing an executed Transmission Service Agreement between WPS and Manitowoc Public Utilities. The Agreement provides for transmission service under the T-1 Transmission Tariff, FERC Original Volume No. 4.

WPS asks that the agreement become effective sixty days after filing.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Potomac Electric Power Co.

[Docket No. ER93-691-000]

Take notice that on June 17, 1993, Potomac Electric Power Company (PEPCO) tendered for filing an amendment to its original filing filed in this docket on June 2, 1993.

Comment date: July 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Consumers Power Co.

[Docket No. ER93-753-000]

Take notice that on July 1, 1993, Consumers Power Company (Consumers) tendered for filing changes to its Electric Service Tariff, Second Revised Volume No. 1 (Rate WR) and various interconnection and operating agreements (Consumers Power FPC Nos. 22, 23 and 41 and FERC Nos. 45, 50, 55 and 67). The changes are in large part a matter of updating those schedules and Rate WR to reflect changes in customers and to add an attachment to FERC No.67. No changes in rates are being proposed.

A copy of the filing was served upon the Michigan Public Service Commission, the Public Utility Commission of Ohio and Indiana Utility

Regulatory Commission, as well as on all affected customers.

Comment date: July 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Niagara Mohawk Power Corp.

[Docket No. ER93–760–000]

Take notice that on July 2, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 165, an agreement between Niagara Mohawk and the New York State Electric & Gas Corporation.

Rate Schedule No. 165 provides for the wheeling of certain loads by Niagara Mohawk to NYSEG. The proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes an effective date of September 1, 1993. In support thereof, Niagara Mohawk states that NYSEG has consented to this proposed effective date.

Copies of this filing were served upon the following: the Public Service Commission of the State of New York and the New York State Electric & Gas Corporation.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. The Potomac Edison Co.

[Docket No. ER93–765–000]

Take notice that on July 2, 1993, The Potomac Edison Company tendered for filing proposed changes in its FERC Electric Tariff, First Revised Volume No. 3. The proposed changes would increase revenues from jurisdictional sales and service by $1,499,742 based on the twelve-month period ending December 31, 1993. The proposed effective date for the increased rates is September 15, 1993.

The changes proposed are for the purpose of recovering increased costs incurred by the Company and to update and clarify language in the existing Tariff.

Copies of the filing were served upon the jurisdictional Customers, Maryland Public Service Commission, Pennsylvania Public Utility Commission, Public Utilities Commission of Ohio, West Virginia Public Service Commission, and Virginia State Corporation Commission.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of New Mexico

[Docket No. ER93–767–000]

Take notice that on July 2, 1993, Public Service Company of New Mexico (PNM) tendered for filing the following documents:

1. Assignment and Assumption Agreement, between Century Power Corporation (Century) and Southern California Public Power Authority (SCPPA);

2. Consent and Acceptance of Voting Rights, between Century and SCPPA; and

3. Letter, acknowledgement and Agreement, and Acknowledgement, among SCPPA, Tucson Electric Power Company and PNM.

PNM submits this filing as an information filing, but if the Commission treats the filing otherwise, requests an effective date of July 1, 1993, the date of Century's conveyance of an interest in the San Juan Generating Station to SCPPA.

Comment date: July 23, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Co.

[Docket No. ER93–764–000]

Take notice that on July 2, 1993, Northeast Utilities Service Company (NUSCO), on behalf of its operating subsidiaries, The Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO), tendered for filing, pursuant to section 205 of the Federal Power Act and § 35.13 of the Commission's Regulations, its borderline sales tariffs and associated service agreements. These tariffs govern sales by the between CL&P and WMECO and their neighboring utility, Massachusetts Electric Company, for resale to individual customers. NUSCO requests that the tariffs and agreements be made effective in accordance with their terms.

NUSCO states that copies of its filing have been provided to each utility affected thereby.

Comment date: July 23, 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. 93–16745 Filed 7–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11184–002 Washington]

Cowlitz Basin 3 Limited Partnership; Surrender of Preliminary Permit

July 9, 1993.

Take notice that Cowlitz Basin 3 Limited Partnership, Permittee for the Coal Creek Project No. 11184, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11184 was issued June 29, 1992, and would have expired May 31, 1995. The project would have been located in Gifford Pinchot National Forest, on Coal and Lost Creeks, in Lewis County, Washington.

The Permittee filed the request on June 10, 1993, and the preliminary permit for Project No. 11184 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit 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. 93–16748 Filed 7–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EL93–51–000 and TX93–4–000]

Florida Municipal Power Agency v. Florida Power & Light Co.; Filing

July 9, 1993.

Take notice that on July 2, 1993, Florida Municipal Power Agency tendered for filing a complaint and application for an order requiring provision of transmission services and a motion for summary disposition against Florida Power & Light Company.

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 18 CFR 385.214). All such motions or protests should be filed on or before August 9, 1993. 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. Answers to the complaint shall be due on or before August 9, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16747 Filed 7–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–533–000]

K N Energy, Inc.; Request Under Blanket Authorization

July 9, 1993.

Take notice that on July 6, 1993, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP93–533–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps for the delivery of gas to end-users on its system under the authorization issued in Docket Nos. CP83–140–000, CP83–141–001 and CP83–141–002 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.

K N proposes to deliver system supply gas to 14 end users located in Kansas, Nebraska and Wyoming. K N estimates that the approximate total peak day and annual volumes to be sold to the end-users will be 1,016 MMcf and 60,787 MMcf, respectively. It is estimated that the cost of the facilities will be $120,450. K N states that customers reimburse it a portion of these costs through the imposition of a connection charge, which varies by state as follows: Kansas—$250, Nebraska—$400 and Wyoming—$400.

K N states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on its peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn, within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16743 Filed 7–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–531–000]

Tennessee Gas Pipeline Co.; Request Under Blanket Authorization

July 9, 1993.

Take notice that on July 2, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93–531–000 a request pursuant to § 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon 11 sales taps used for direct sales under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to abandon the 11 farm taps, which were used for irrigation purposes, and related valve assemblies and appurtenances, by removal, as detailed below.

Customer	Location	Cost of facilities
Herbert-Helms & Company.	Cameron Parish, LA	$1,755
C. Kuntz	Allen Parish, LA	1,667
E. Fontenot	Allen Parish, LA	2,926
G. Godeaux	Jefferson Davis Parish, LA.	3,691
J. Garbarino	Jefferson Davis Parish, LA.	4,223
S. Fontenot	Jefferson Davis Parish, LA.	2,273
W. Angelle .	Jefferson Davis Parish, LA.	5,790
M. Augustine.	Jefferson Davis Parish, LA.	3,446
Walker-Louisiana Properties.	Jefferson Davis Parish, LA.	2,551
R. Doucet ..	Jefferson Davis Parish, LA.	4,188
W. Watkins	Jefferson Davis Parish, LA.	1,697

Tennessee states that the facilities are being abandoned because they have been inactive and are no longer needed. The application includes statements of written consent from the customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16742 Filed 7–14–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–530–000]

Texas Gas Transmission Corp.; Request Under Blanket Authorization

July 9, 1993.

Take notice that on July 1, 1993, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP93–530–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to expand the measurement capacity of an existing delivery point through which it renders natural gas service to Mississippi Valley Gas Company (MVG) in Tunica County, Mississippi, under Texas Gas's 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 it currently renders natural gas service to MVG in Texas Gas's Rate Zone 1 pursuant to a Service Agreement dated November 1, 1991. Texas Gas further states that the existing delivery point is known as the

Robinsonville Meter Station (Robinsonville) and is located near Robinsonville, Mississippi, on Texas Gas's No. 1 and No. 2 18-inch pipelines in Tunica County. Texas Gas says that MVG has requested that Texas Gas upgrade this existing delivery point in order for it to serve a new commercial development, including several casinos, hotels, restaurants and related facilities, to be located on the Mississippi River near Tunica, Mississippi. Natural gas would be used primarily for electric generation and air conditioning, it is stated.

Texas Gas proposes to replace the existing 2-inch positive meter at this existing delivery point with a 4-inch orifice meter run. Texas Gas states that MVG has requested that Texas Gas upgrade the existing meter to be capable of measuring a maximum of 9,600 MMBtu per day, or 3,504,000 annually.

The expansion of this delivery point would not result in an increase in MVG's current daily contract demand. Furthermore, Texas Gas states that service to MVG through this delivery point can be accomplished without detriment to Texas Gas's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to §157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–16744 Filed 7–14–93; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 6, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0515

Title: Section 43.21(d), Miscellaneous Common Carrier and Record Carrier Annual Letter Filing Requirement

Action: Revision of a currently approved collection

Respondents: Businesses or other for-profit

Frequency of Response: Annually

Estimated Annual Burden: 23 responses; 1.43 hours average burden per response; 33 hours total annual burden

Needs and Uses: The attached Report and Order, CC Docket No. 92–145, amends part 43 of the Commission's rules to require that record carriers with annual operating revenue over $75 million file an annual letter with the Commission.

The letter must contain information pertaining to the carrier's revenues, expenses, net income, assets, liabilities and owner's equity. See attached income statement and balance sheet for information that each record carrier must file. This annual reporting requirement represents a substantial reduction in the information requirements previously imposed on these carriers. The Commission issued a Notice of Proposed Rulemaking (NPRM) in CC Docket No. 92–145 soliciting public comment to eliminate parts 34 and 35 and the related Annual Reports Form O & R. The Commission tentatively concluded that the accounting rules and annual reports were of limited value. The NPRM also sought comment to amend part 43 to require radiotelegraph, wire-telegraph, and ocean-cable carriers (record carriers) with annual revenues of $100 million to file a letter each year with the Commission specifying its operating revenues and the net book value of its communications plant. The Commission adopts its proposals to eliminate parts 34 and 35 and the Annual Report Forms O & R in the attached Report and Order. The Commission also adopted its proposal to amend § 43.21, but with modifications. As stated above, record carriers with annual revenues over $75 million, rather than $100 million, are required to file an annual letter with the Commission. The letter must contain more detailed financial information than originally proposed. See Appendix B of the attached Report and Order for the one-page income statement and balance sheet that encompasses the information necessary for our regulatory oversight. Record carriers with annual revenues over $75 million are required to file an annual letter which includes the information on the attached income and balance sheet. The annual reporting requirement will continue to allow the Commission to track operating results of the record carriers. Lowering the revenue requirement threshold to $75 million insures that we receive information from the major record carriers.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 93–16726 Filed 7–14–93; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted To Office Of Management And Budget For Review

July 9, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0400

Title: Tariff Review Plan

Action: Revision of a currently approved collection

Respondents: Businesses or other for-profit

Frequency of Response: Annually

Estimated Annual Burden: 46 responses; 40 hours average burden per response; 1,840 hours total annual burden

Needs and Uses: The Communications Act of 1934, as amended, and 47

U.S.C. sections 201, 202, 203, 204, and 205 require that common carriers establish just and reasonable charges, practices and regulations for the services they provide.

The schedules containing those charges, practices and regulations must be filed with the FCC which is required to determine whether such schedules are just, reasonable, and not unduly discriminatory. The Commission is also granted broad authority to require the submission of data showing the value of the property used to provide these services. FCC has adopted specific rules for the calculations of rates charged by local telephone companies and paid by local customers or long distance telephone companies who access local facilities to provide interstate services (47 CFR part 69). Local telephone companies are required to update these rates yearly and biennially to reflect FCC requirements and changes in costs and demand, and to provide the cost support for these changes required by FCC rules. To aid its review of the required annual revisions of the local telephone companies' interstate access tariffs, the Commission has developed the Tariff Review Plan (TRP). The TRPs specify basic cost and demand information in a consistent format and are essential components of the Commission's access tariff review process. Sixteen of the largest Tier 1 companies file pursuant to price cap regulation under section 61.43. Thirty companies under rate of return regulation file pursuant to section 61.38 or 61.39. One Tier 1 company files under section 61.38, although this company has the option to file pursuant to section 61.43. This year, we significantly reduced the size of the Tier 1 TRP for rate of return companies and thus the reporting burden for this company. The 29 other rate of return companies are small Tier 2 companies filing a shortened TRP. In total, 46 companies file a TRP. An additional 29 companies file pursuant to section 61.39. Local telephone companies filing pursuant to 47 CFR 61.39 are not required to submit cost support at the time of filing. If the information were not filed the FCC would not be able to carry out its responsibilities as required by the Act.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–16837 Filed 7–14–93; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–993–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–993–DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota dated June 11, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 11, 1993:

Renville, Yellow Medicine, Sibley, Watonwan, Blue Earth, and Nicollet counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–16765 Filed 7–14–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–994–DR]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–994–DR), dated July 2, 1993, and related determinations.

EFFECTIVE DATE: July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 2, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Wisconsin, resulting from severe storms, tornadoes, and flooding on June 7, 1993, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Philip N. Zaferopulos of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared major disaster:

Calumet, Clark, Eau Claire, Green Lake, Jackson, Marquette, and Trampeauleau Counties for Public and Individual Assistance.

Columbia, Dunn, Fond du Lac, Outagamie, Portage, Sauk, Waupaca, Waushara, Winnebago, and Wood Counties for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 93–16764 Filed 7–14–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed, Manchester Terminal Corp./Southern Stevedoring Co., Inc. Terminal Agreement et al.

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.: 224–200108–001.

Title: Manchester Terminal Corporation/Southern Stevedoring Co., Inc. Terminal Agreement.

Parties:

Manchester Terminal Corporation ("MTC")

Southern Stevedoring Co., Inc. ("SSC")

Synopsis: The proposed amendment permits SSC to load, unload, handle and render other related services pertaining to cargo and containers moving through MTC's facilities. It also extends the term of the Agreement for one year.

Agreement No.: 224–200229–001.

Title: Manchester Terminal Corporation/Scott Marine Services, Inc. Terminal Agreement.

Parties:

Manchester Terminal Corporation ("MTC")

Scott Marine Services, Inc. ("Scott Marine")

Synopsis: The proposed amendment permits Scott Marine to load, unload, handle and render other related services pertaining to cargo and containers moving through MTC's facilities. It also extends the term of the Agreement for one year.

Agreement No.: 224–200742–001.

Title: Manchester Terminal Corporation/Gulf Stream Marine, Inc. Terminal Agreement.

Parties:

Manchester Terminal Corporation ("MTC")

Gulf Stream Marine, Inc. ("Gulf Stream")

Synopsis: The proposed amendment permits Gulf Stream to load, unload, handle and render other related services pertaining to cargo and containers moving through MTC's facilities. It also extends the term of the Agreement for one year.

Dated: July 9, 1993.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–16695 Filed 7–14–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Central Florida Freight Forwarders, Inc., 1731 Itchepackesassa Dr., Lakeland FL 33809, Officers: Richard K. Greene, President/Director/Stockholder, Jo Ellen Greene, Vice President/Director/Stockholder.

A.G.W. International, P.O. Box 1555, 1085 S. Highway 80, Benson, AR 85602, Alex G. Weimer, Sole Proprietor.

Frimpex International Company, 477 Peninsula Blvd. Cedarhurst, NY 11516, Santiago T. Parks, Sole Proprietor.

AXO Chemical, Inc., P.O. Box 55973, Miami, FL 33255, Officers: Enrique Garcia, President, Gullermo R. Fernandez, Vice President, Guillermo Fernandez-Quirch, Treasurer.

Express Shipping International, 700 Park Avenue, #4D, Baltimore, MD 21201, Joseph M. Issa, Sole Proprietor.

Matrix Express, Inc. 154–09 146th Avenue, #302, Jamaica, NY 11434, Officers: Andrew Wu, President/Director, Jeff Wang, Director, Patrick Chung, Secretary.

Customized Brokers, 10204 S.W. 115th Court, Miami, FL 33176, Patricia Compress, Sole Proprietor.

Dated: July 12, 1993.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–16779 Filed 7–14–93; 8:45 am]

BILLING CODE 6730–01–M

Reinstatement

By notice published in the Federal Register on Friday, May 14, 1993 (58 FR 28571–2) Sea Cargo International, Inc.'s ("Sea Cargo") ocean freight forwarder license (No. 2206–R) was suspended in accordance with 46 CFR 510.16(a)(6) because of its failure to file an anti-rebate certification with the Commission on or before December 31, 1992. Sea Cargo has now corrected this deficiency and filed a anti-rebate certification for calendar years 1993–1994 as required by the Commission's rules at 46 CFR 582.1(a) and 582.3(b). Therefore, the suspension of Sea Cargo's license is lifted and its license reinstated effective May 19, 1993, the day it submitted the required anti-rebate certification.

Dated: July 8, 1993.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–16778 Filed 7–14–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

George Mason Bankshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the

evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 4, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. George Mason Bankshares, Inc., Fairfax, Virginia; to engage *de novo* in issuing letters of credit for customers of The George Mason Bank, Fairfax, Virginia, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16751 Filed 7-14-93; 8:45 am]

BILLING CODE 6210-01-F

OBANKCORP, INC.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 9, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. OBANKCORP, INC., Geraldine, Montana; to become a bank holding company by acquiring 98.2 percent of the voting shares of Geraldine State Bank, Geraldine, Montana.

Board of Governors of the Federal Reserve System, July 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-16752 Filed 7-14-93; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Steering Committee for the African Burial Ground, New York, NY; Meeting

Notice is hereby given that the Steering Committee for the African Burial Ground, New York, NY (Steering Committee) has revised its schedule of regular meetings for 1993 to include (1) weekly meetings through August 2, 1993, and (2) monthly meetings commencing with September, 1993 on the last Monday of each month. Meetings are now scheduled on the following dates:

July 12, July 19, July 26, August 2, September 27, October 25, November 29, and December 27, 1993.

All meetings will be held in the 2nd floor archives of the Schomburg Center for Research in Black Culture, New York, Public Library, 515 Malcolm X Boulevard (at 135th Street), New York, NY and will begin at 6 p.m. Meetings may be continued to the following day(s), if necessary, and shall be so announced during the meeting. Seating may be limited. Please call (212) 264–0456 prior to each meeting to confirm the date, time, and location of the meeting.

At the meetings the Steering Committee will consider matters properly coming before it under its charter and its rules and regulations. At the July and August meetings the Steering Committee will additionally consider the adoption of recommendations to be submitted to the Administrator of General Services relating to the memorialization plan for the African Burial Ground in New York City to be submitted by the Administrator to Congress by August 6, 1993, as provided in Section 16 of Public Law 102–393.

All meetings will be open to the public. Members of the public at large, as may be recognized by the Chairman of the Steering Committee, will be permitted to speak at the meetings at designated times as provided in the resolutions and rules of the Steering Committee. Written comments by any person respecting any aspect of the Steering Committee's mission and other Questions regarding the Steering Committee's meetings may be directed to: Chairman Howard Dodson, Chief, Schomburg Center for Research in Black Culture, New York Public Library, 515 Malcolm X Boulevard, New York, NY 10037–1801, Tel: (212) 491–2200.

Copies of such written comments may be sent to Robert W. Martin, Acting Regional Administrator, General Services Administration, Region 2, 26 Federal Plaza, New York, NY 10278.

Less than 15 days published notice in the **Federal Register** is being given for the meetings of July 19 and August 2 because the Steering Committee requires these additional meetings to complete its mission of considering and adopting the above described recommendations for submission to the Administrator of General Services prior to the Administrator submitting the above described plan to Congress by August 6, 1993.

Dated: July 7, 1993.

Robert W. Martin,

Acting Regional Administrator, General Services Administration, Region 2, 26 Federal Plaza, New York, NY 10278.

[FR Doc. 93–16715 Filed 7–15–93; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F–0393]

CdF Chimie SA.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 7B4034) proposing that the food additive regulations be amended to provide for the safe use of terpolymers manufactured from ethylene, maleic anhydride, and either ethyl acrylate or *n*-butyl acrylate for food-contact applications.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 6, 1988 (53 FR 288), FDA announced that a food additive petition (FAP 7B4034) had been filed by CdF Chimie SA., Tour Aurore, Cedex 5

92080, Paris la Defense, France. The petition proposed that the food additive regulations be amended to provide for the safe use of terpolymers manufactured from ethylene, maleic anhydride, and either ethyl acrylate or *n*-butyl acrylate for food-contact applications. CdF Chimie SA. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: July 7, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–16763 Filed 7–14–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0183]

Revisions to the Food Chemicals Codex Policy on Lead and Heavy Metals Specifications; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment to support implementation of the revised Food Chemicals Codex policy on lead and heavy metals specifications that was approved by the National Academy of Sciences/Institute of Medicine (NAS/IOM) Committee on Food Chemicals Codex. This revised policy is intended to be published in the fourth edition of the Food Chemicals Codex. FDA is also giving notice that the Committee is soliciting suggestions for lower limits for lead and heavy metals in food ingredient monographs.

DATES: Comments and information by September 13, 1993. The NAS/IOM Committee on Food Chemicals Codex advises that comments and information not received by this date cannot be considered for the fourth edition but will be considered for a later edition or supplement.

ADDRESSES: Submit written comments and information to the NAS/IOM Committee on Food Chemicals Codex, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT: Fatima N. Johnson, Committee on Food Chemicals Codex, Food and Nutrition Board, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580, or Paul M. Kuznesof, Center for Food Safety and Applied Nutrition (HFS–247), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9537.

SUPPLEMENTARY INFORMATION: FDA provides research contracts to NAS/IOM to support the preparation of the Food Chemicals Codex, a compilation of specification monographs for substances used as food ingredients. In the **Federal Register** of November 22, 1991 (56 FR 58910), FDA announced that the NAS/IOM Committee on Food Chemicals Codex was considering new monographs and monograph revisions for inclusion in the fourth supplement to the Food Chemicals Codex, third edition that is scheduled to be published in late 1993. The public was invited to comment and make suggestions for consideration.

FDA now gives notice that the NAS/IOM Committee on Food Chemicals Codex is soliciting, from all interested parties, comments and data to support implementation of the following revised policy for establishing lower specifications for lead and heavy metals:

The Committee on Food Chemicals Codex (FCC) recognizes the desirability of lowering lead exposure, especially in the case of infants and children. Overall exposure to lead is a public health concern. Whereas diet is not the largest source of lead exposure, it is a significant one. While ingestion of FCC substances does not represent the major source of dietary lead, it is desirable to lower the lead limits for all FCC substances, particularly for those substances consumed in high amounts. Therefore, the Committee's policy is to reduce lead limits (as well as the heavy metals limit because of their interrelated nature) to the lowest extent feasible for FCC substances, especially given that more recent evidence shows deleterious neurobehavioral effects occurring in children exposed to lead at levels below those previously considered acceptable.

In setting heavy metals and lead limits, the Committee considers the amount of a food chemical consumed, the feasibility of manufacturing a product within these limits, and the availability of analytical methods to ensure compliance. The constraints of good manufacturing practice and the availability of reliable analytical methods are often limiting factors in setting lower lead and heavy metals limits.

The Committee regards as one of its goals the assurance of the safety of properly used food chemicals. This means that FCC specifications will respond to advances in knowledge about new manufacturing methods, analytical techniques, or toxicology and safety issues.

This revised policy will be published in the planned fourth edition of the Food Chemicals Codex that is scheduled for publication in early 1996.

In addition, FDA gives notice that the NAS/IOM Committee on Food Chemicals Codex is soliciting suggested lower limits for lead and heavy metals (this includes silver, arsenic, bismuth, cadmium, copper, mercury, lead, antimony, and tin) in food ingredient monographs. In responding, the Committee invites industry and other interested persons to provide: (1) Manufacturing and production data that can be used in setting lower lead and heavy metals limits, and (2) information on appropriate analytical methodologies for quantifying these trace element contaminants in specific food chemicals.

Information received in response to this notice will be used by the NAS/IOM Committee on Food Chemicals Codex when considering new specifications for lead and heavy metals and in reaching its conclusions regarding implementation of the revised policy. The public will be given ample opportunity to comment on any suggested changes in Food Chemicals Codex monographs.

FDA emphasizes that it will continue to publish any proposals to adopt new Food Chemicals Codex monographs or monograph revisions for currently regulated substances in the **Federal Register.** The public will be given ample opportunity to comment on any suggested changes in FDA specifications.

Two copies of written comments are to be submitted to NAS at the address listed above. Comments can be submitted electronically to the Food Chemicals Codex bulletin board, 202–334–1738, as well. Each submission should include the statement that it is in response to this **Federal Register** notice. NAS will forward a copy of each comment, submitted either electronically or in writing, to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, to be placed under docket number 93N–0183 for public review.

Dated: July 8, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–16698 Filed 7–14–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 77N–0240; DESI 1786]

Nitroglycerin Transdermal System; Drug Efficacy Study Implementation; Revocation of Exemption; Final Evaluation and Announcement of Marketing Conditions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is revoking the temporary exemption for single-entity coronary vasodilator drug products containing nitroglycerin in a transdermal delivery system. The exemption has permitted the products to remain on the market beyond the time limit scheduled for implementation of the Drug Efficacy Study. FDA also announces the conditions for marketing these products for the indication for which they are now regarded as effective.

DATES: The revocation of exemption is effective July 15, 1993; bioavailability supplements to conditionally approved new drug applications (NDA's) are due on or before July 15, 1994; bioequivalence supplements to conditionally approved abbreviated new drug applications (ANDA's) are due on or before July 15, 1994; other supplements to all conditionally approved applications are due on or before September 13, 1993.

ADDRESSES: Communications in response to this notice should be identified with the reference number DESI 1786 and directed to the attention of the appropriate office named below.

Supplements to conditionally approved NDA's (identify with NDA number): Division of Cardio-Renal Drug Products (HFD–110), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to conditionally approved ANDA's (identify with ANDA number): Office of Generic Drugs (HFD–600), Center for Drug Evaluation and Research, Food and Drug Administration, Metropark North No. 2, 7500 Standish Pl., Rockville, MD 20855.

Section 505(b)(2) applications (before designation of a listed drug) and ANDA's (after designation of a listed drug) (identify submission type): Office of Generic Drugs (HFD–600), Center for Drug Evaluation and Research, Food and Drug Administration, Metropark North No. 2, 7500 Standish Pl., Rockville, MD 20855.

Requests for information on conducting bioavailability tests for conditionally approved NDA's: Division of Cardio-Renal Drug Products (HFD–110), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857

Requests for information on conducting bioequivalence tests for conditionally approved ANDA's, section 505(b)(2) applications, or new ANDA's: Division of Bioequivalence (HFD–650), Center for Drug Evaluation and Research, 7500 Standish Pl., Rockville, MD 20855.

Requests for the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD–310), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Mary Catchings, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8041.

SUPPLEMENTARY INFORMATION:

I. Background

Under the agency's Drug Efficacy Study Implementation (DESI) program, the National Academy of Sciences/National Research Council (NAS/NRC) evaluated the effectiveness of certain coronary vasodilators, including nitroglycerin sustained-release tablets. Based on NAS/NRC's recommendations, FDA classified most of the coronary vasodilators, including nitroglycerin sustained-release tablets, as possibly effective for indications relating to the management, prophylaxis, or treatment of anginal attacks. This classification was announced in the **Federal Register** of February 25, 1972 (37 FR 4001).

In a notice published in the **Federal Register** of December 14, 1972 (37 FR 26623), as amended July 11, 1973 (38 FR 18477), August 26, 1977 (42 FR 43127), October 21, 1977 (42 FR 56156), and September 15, 1978 (43 FR 41282), FDA temporarily exempted the single-entity coronary vasodilators covered by the DESI program, including nitroglycerin sustained-release tablets, from the time limits established for completing the program (Paragraph XIV, Category I exemption). FDA granted this exemption to allow manufacturers additional time to study the effectiveness and bioavailability of their products. FDA also added additional dosage forms of nitroglycerin to the Drug Efficacy Study and the Paragraph XIV, Category I exemption because of the need to study the effectiveness and bioavailability of these products.

The exemption notices established conditions for marketing the single-entity coronary vasodilators pending FDA's conclusions about the products. FDA required that manufacturers conduct both bioavailability and clinical effectiveness studies. In addition, FDA required that all single-entity coronary vasodilator drug products covered by the DESI review that were marketed without approved NDA's, or that entered the market during the exemption period, be the subject of conditionally approved ANDA's. These ANDA's were given the same status as the "deemed approved" NDA's under review in the DESI program, i.e., safe but not proven effective.

Under the provisions of the exemption notices, the sponsors of the nitroglycerin transdermal system drug products listed below submitted ANDA's and received conditional approval for marketing because of the similarity of the products to other exempt nitroglycerin ointment products. During the exemption, several sponsors of nitroglycerin transdermal products submitted data from clinical effectiveness trials.

The Director, Center for Drug Evaluation and Research, has considered the results from the clinical effectiveness trials submitted for the transdermal delivery system of nitroglycerin as well as other available information and has determined that this form of nitroglycerin is effective for the prophylaxis of angina pectoris. Accordingly, the Director hereby revokes the temporary Paragraph XIV, Category I exemption for nitroglycerin transdermal system and announces the conditions for approval and marketing of the drug. No other forms of nitroglycerin remain exempt under the Paragraph XIV, Category I exemption.

II. Conditionally Approved Products

The following applications have been conditionally approved under the terms of the exemption notices. The conditionally approved NDA's listed below were converted from conditionally approved ANDA's because the products covered by the applications were used in studies that support the determination that nitroglycerin transdermal is effective when used according to the labeling conditions described below.

A. Conditionally Approved NDA's

1. NDA 20–144; Transderm-Nitro, release rate 0.1 milligram (mg) of nitroglycerin per hour (h); Summit Pharmaceutical Co., Division of Ciba-Geigy Corp., 556 Morris Ave., Summit, NJ 07901 (Summit) (formerly held by Alza Corp., 950 Page Mill Rd., Palo Alto, CA 94304).

Transderm-Nitro, release rate 0.2 mg of nitroglycerin per h; Summit.

Transderm-Nitro, release rate 0.4 mg of nitroglycerin per h; Summit.

Transderm-Nitro, release rate 0.6 mg of nitroglycerin per h; Summit.

2. NDA 20–145; Nitro-Dur, release rate 0.1 mg of nitroglycerin per h; Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033 (Schering).

Nitro-Dur, release rate 0.2 mg of nitroglycerin per h; Schering.

Nitro-Dur, release rate 0.3 mg of nitroglycerin per h; Schering.

Nitro-Dur, release rate 0.4 mg of nitroglycerin per h; Schering.

Nitro-Dur, release rate 0.6 mg of nitroglycerin per h; Schering.

3. NDA 20–146; Nitrodisc, release rate 0.2 mg of nitroglycerin per h; G. D. Searle and Co., 4901 Searle Pkwy., Skokie, IL 60077 (Searle).

Nitrodisc, release rate 0.3 mg of nitroglycerin per h; Searle.

Nitrodisc, release rate 0.4 mg of nitroglycerin per h; Searle.

B. Conditionally Approved ANDA's

1. ANDA 88–727; Deponit, release rate 0.2 mg of nitroglycerin per h; Schwarz Pharma Kremers Urban Co., 5600 West County Line Rd., Mequon, WI 53092 (Schwarz) (formerly held by Wyeth Laboratories, Inc., P.O. Box 8297, Philadelphia, PA 19101).

2. ANDA 88–782; Nitroglycerin Transdermal System (NTS), release rate 0.2 mg of nitroglycerin per h; Hercon Pharmaceutical Co., Inc., P. O. Box 786, York, PA 17405 (Hercon).

3. ANDA 88–783; NTS, release rate 0.6 mg of nitroglycerin per h; Hercon.

4. ANDA 89–022; Deponit, release rate 0.4 mg of nitroglycerin per h; Schwarz.

5. ANDA 89–516; NTS release rate 0.4 mg of nitroglycerin per h; Hercon.

6. ANDA 89–771; Minitran, release rate 0.1 mg of nitroglycerin per h; 3M Pharmaceuticals, Bldg. 270–3A–01, 3M Center, St. Paul, MN 55144 (3M).

7. ANDA 89–772; Minitran, release rate 0.2 mg of nitroglycerin per h; 3M.

8. ANDA 89–773; Minitran, release rate 0.4 mg of nitroglycerin per h; 3M.

9. ANDA 89–774; Minitran, release rate 0.6 mg of nitroglycerin per h; 3M.

III. New Drug Status

A drug product that contains nitroglycerin in a transdermal delivery system form is regarded as a new drug under section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), and an approved application under section 505 of the act (21 U.S.C. 355) is required for marketing it.

In addition to the products specifically named above, this notice applies to any product that is not the subject of an approved application and is identical to a drug product named above. It may also be applicable, under 21 CFR 310.6, to a related or similar drug product that is not the subject of an approved application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address above).

IV. Conditions for Approval and Marketing

FDA is prepared to approve section 505(b)(2) applications (prior to designation of a reference listed drug), ANDA's (after designation of a referenced listed drug), and supplements to conditionally approved ANDA's and conditionally approved NDA's under the conditions described in this notice.

A. Form of Drug

The drug is in transdermal delivery system form suitable for topical administration.

B. Labeling Conditions

1. The label bears the statement "Caution: Federal law prohibits dispensing without prescription."

2. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows: "Transdermal nitroglycerin is indicated for the prevention of angina pectoris due to coronary artery disease. The onset of action of transdermal nitroglycerin is not sufficiently rapid for this product to be useful in aborting an acute attack."

C. Marketing Status

1. Conditionally Approved NDA's

Marketing of a drug product that is now the subject of a conditionally approved NDA may be continued provided that, on or before September 13, 1993, the holder of the application has submitted: (i) Revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted; and (ii) a supplement to provide updating information with respect to the composition, manufacture, and specifications of the drug substance and the drug product as described in 21 CFR 314.50(d)(1)(i) and (d)(1)(ii). Revised labeling in accordance with the labeling conditions described above shall be put into use on or before September 13, 1993. In addition, to permit full approval of the application on the basis of effectiveness, as well as safety, the holder of a conditionally approved NDA is required to supplement its application, on or before July 15, 1994 to provide acceptable in vitro dissolution tests and in vivo bioavailability studies on the drug product. For information on conducting an acceptable in vivo bioavailability study, an applicant should contact the Division of Cardio-Renal Drug Products (address above).

2. Conditionally Approved ANDA's

Marketing of a drug product that is now the subject of a conditionally approved ANDA may be continued provided that, on or before September 13, 1993, the holder of the application has submitted: (i) Revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted; and (ii) a supplement to provide updating information with respect to the composition, manufacture, and specifications of the drug substance and the drug product as described in 21 CFR 314.50(d)(1)(i) and (d)(1)(ii). Revised labeling in accordance with the labeling conditions described above shall be put into use on or before September 13, 1993. In addition, to permit full approval of the application on the basis of effectiveness, as well as safety, the holder of a conditionally approved ANDA is required to supplement its application, on or before July 15, 1994, to provide acceptable in vitro dissolution and acceptable information demonstrating the in vivo bioequivalence of its drug product to the drug product designated by FDA as the reference drug. For information on conducting an adequate in vivo bioequivalence study, the designated reference drug, and in vitro dissolution methodology, an applicant should contact the Division of Bioequivalence (address above).

3. New Applications

Approval of an application under section 505 of the act must be obtained before marketing nitroglycerin transdermal products. An applicant seeking approval of a nitroglycerin transdermal product before a product listed in this notice is approved on the basis of effectiveness should submit a section 505(b)(2) application to the Office of Generic Drugs. The application must contain the information specified in section 505(b)(2) of the act (21 U.S.C. 355(b)(2)). The proposed labeling must meet the labeling conditions specified in this notice. To satisfy the full reports of investigations requirement under section 505(b)(1)(A) of the act, the applicant may refer to the agency's conclusions announced in this notice and must demonstrate that the proposed product is bioequivalent to the drug

product designated by the agency as the reference drug. For information on conducting an adequate in vivo bioequivalence study, in vitro dissolution, and the designated reference drug, an applicant should contact the Division of Bioequivalence (address above).

Once FDA designates a reference listed drug, an applicant seeking approval of a nitroglycerin transdermal product must submit an ANDA that meets the requirements of section 505(j) of the act and 21 CFR 314.94.

Marketing a nitroglycerin transdermal product prior to approval of an application will subject the product, and those persons who caused the product to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505 (21 U.S.C. 352, 355)) and under the authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.70).

Dated: July 5, 1993.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 93–16762 Filed 7–14–93; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration Workshops for the Compressed Medical Gas Industry; Notice of Public Workshops

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshops.

SUMMARY: The Food and Drug Administration (FDA), Pacific Region Small Business Assistance Program, the Center for Drug Evaluation and Research, and the Office of Small Business, Scientific and Trade Affairs are sponsoring three public workshops on FDA requirements that apply to the compressed medical gas industry. These workshops are designed to assist the industry in complying with regulations for manufacturing and repacking medical gases.

DATES: The public workshops will be held on August 30, 1993; September 1, 1993; and September 3, 1993, 8:30 a.m. to 4 p.m.

ADDRESSES: The public workshops will be held at the following locations:
August 30, 1993: Sheraton Los Angeles Airport Hotel, 6101 West Century Blvd., Los Angeles, CA.
September 1, 1993: Hyatt Regency San Francisco Airport, 1333 Bayshore Hwy., Burlingame, CA.
September 3, 1993: Radisson Hotel Seattle Airport, 17001 Pacific Highway South, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Mark Roh, Pacific Region Small Business Assistance Program, Food and Drug Administration, Federal Office Bldg., rm. 526, 50 United Nations Plaza, San Francisco, CA 94102, 415–556–2263 or FAX 415–556–2822.

Those persons interested in attending this meeting should FAX their registration to 415–556–2822, including name, firm name, address, and telephone number. There is no registration fee for these workshops, but advance registration is required. Space is limited and all interested parties are encouraged to register early.

SUPPLEMENTARY INFORMATION: FDA's inspectional history of the industry shows that a high percentage of medical gas firms are unaware of applicable regulations and guidelines or are not in compliance with applicable requirements. These workshops are designed to assist the medical gas industry and are free of charge to attendees.

Dated: July 9, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–16761 Filed 7–15–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Meetings of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the National Deafness and Other Communication Disorders Advisory Council and its Planning Subcommittee on September 29-October 1, 1993, at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. The meeting of the full Council will be held in Conference Room 6, Building 31C, and the meeting of the subcommittee will be in room 3C05, Building 31C.

The meeting of the Planning Subcommittee will be open to the public on September 29 from 2 pm until 3 pm for the discussion of policy issues. The meeting of the full Council will be open to the public on September 30 form 8:30 am until recess for a report from the Institute Director and discussion of extramural policies and procedures at the National Institutes of Health and the National Institute on Deafness and Other Communication Disorders and on October 1 from 8:30 am to approximately 9:30 am for a report on extramural programs of the Division of Communication Sciences and Disorders.

In accordance with the provisions set forth in sec. 553b(c)(4) and 552(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting of the Planning Subcommittee on September 29 will be closed to the public from 3 pm to adjournment. The meeting of the full Council will be closed to the public on October 1 from approximately 9:30 am until adjournment. The closed portions of the meetings will be for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council and Subcommittee meetings may be obtain from Dr. John C. Dalton, Executive Secretary, National Deafness and Other Communication Disorders Advisory Council, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Executive Plaza South, Room 400B, Bethesda, Maryland 20892, 301–496–8693. A summary of the meetings and rosters of the members may also be obtained from his office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Dalton at least two weeks prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communication Disorders)

Dated: July 6, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–16738 Filed 7–14–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meeting of the National Advisory General Medical Sciences Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, on September 13

and 14, 1993, Building 31, Conference Rooms 6 and 8, Bethesda, Maryland.

This meeting will be open to the public on September 13, Conference Room 6, from 8:30 a.m. to 1 p.m. for opening remarks; the report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on September 13 from 1 p.m. to 5:30 p.m., and on September 14, from 8:30 a.m. until adjournment, for the review, discussions, and evaluation of individual grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, telephone 301–496–7301, FAX 301–402–0224, will provide a summary of the meeting, and a roster of Council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Ann Dieffenbach in advance of the meeting. Dr. W. Sue Shafer, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 938, Bethesda, Maryland 20892, telephone: 301–594–7751 will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 93.821, Biophysics and Physiological Sciences; 93.859, Pharmacological Sciences; 93.862, Genetics Research; 93.863, Cellular and Molecular Basis of Disease Research; 93.800, Minority Access Research Careers [MARC]; and 93.375, Minority Biomedical Research Support [MBRS])

Dated: July 6, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–16737 Filed 7–14–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Recovery Plan for Schiedea adamantis for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for *Schiedea adamantis*. This endangered plant species occurs on the Diamond Head Crater in Honolulu, Hawaii.

DATES: Comments on the draft recovery plan must be received on or before September 13, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Pacific Island Ecological Services Field Office, U.S. Fish and Wildlife Service, room 6307, 300 Ala Moana Blvd., P.O. Box 50167, Honolulu, Hawaii 96850 (phone 808/541–2749). Written comments and materials regarding this plan should be addressed to Robert P. Smith, Field Supervisor, at the above Honolulu, Hawaii address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Honolulu, Hawaii, address.

FOR FURTHER INFORMATION CONTACT: Karen W. Rosa, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan is *Schiedea adamantis*. One population of this species, estimated at 244 plants in 1990, presently exists. This population is located in one of the few relatively undisturbed areas of the Diamond Head Crater in Honolulu, Hawaii. Historic range and limiting factors are unclear because the population was not discovered until 1955. However, limiting factors most likely include disturbance and loss of habitat, and invasion by alien plants. Current known threats include fire, competition from alien plants, and disturbance by users of a nearby hiking trail. Another possible threat is a lack of genetic diversity caused by increased levels of selfing due to loss of native pollinators. Because only one population of this species is currently in existence, its extinction is threatened by a single catastrophic event.

Recovery efforts will focus on protection of the population from current threats, propagation of plants to augment this population, and establishment of at least two more populations of the species.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of these plans.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 9, 1993.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 93–16757 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–55–M

Record of Decision for the Tijuana Estuary Tidal Restoration Program, Tijuana Slough National Wildlife Refuge, Tijuana River National Estuarine Research Reserve, San Diego County, CA

AGENCY: U.S. Department of the Interior, Fish and Wildlife Service and California State Coastal Conservancy (Lead Agencies).

ACTION: Notice of decision and notice of availability of record of decision.

SUMMARY: This Notice makes available the Record Of Decision (ROD) that has been developed by the U.S. Fish and Wildlife Service (Service) and the California State Coastal Conservancy (Conservancy) in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, and Council on Environmental Quality regulations (40 CFR 1505.2). The purpose of this ROD is to document the decision of the Service and Conservancy (the Agencies) for selection of an alternative for implementing the Tijuana Estuary Tidal Restoration Program (Program). Alternatives have been fully described and evaluated in the September 1992, Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for this Program.

Based on review of the alternatives and their environmental consequences described in the Final EIS/EIR for the Program, the decision of the Agencies is to implement the Preferred Alternative. The Preferred Alternative is the Tidal Restoration Program consisting of the Model Project and the 495-Acre Project combined. The selected alternative is determined to be the environmentally preferred alternative.

Timing of implementation of specific components of the Program will occur based on appropriation of funding, and the availability of personnel and other resources. The Program is designed to maximize the protection of the Tijuana Estuary by establishing a range of mechanisms for recognizing, analyzing and responding to changing conditions. The ROD and appendices summarize the project background and key issues, and provide details of the plan phases.

Public Input

The Service and the Conservancy have provided a full and open public involvement process associated with the development of the Tijuana Estuary Tidal Restoration Program EIS/EIR. The full text of comments and responses is printed in the Final EIS/EIR document.

ADDRESSES: To obtain a copy of the Record of Decision, or for further information on this project, please contact: Ms. Mari Hoffmann-Nelson, U.S. Fish and Wildlife Service, P.O. Box 335, Imperial Beach, California 91933, Telephone: (619) 575–1290.

Approval

Based on the Final Environmental Impact Statement, public comment on the EIS, and other relevant factors, I approve the decision to implement the Tidal Restoration Program, Tijuana Slough National Wildlife Refuge/ Tijuana River National Estuarine Research Reserve. This document meets the requirements for agency decisionmaking as provided by 40 CFR part 1505.

Dated: July 6, 1993.

Marvin L. Plenert,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 93–16792 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–55–M

[DES 93–26]

Availability of Draft Environmental Impact Statement

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability of a draft Environmental Impact Statement (EIS) for the proposed reintroduction of gray wolves to Yellowstone National Park and central Idaho.

DATES: Comments will be accepted until October 15, 1993.

ADDRESSES: Comments would be sent to U.S. Fish and Wildlife Service, Yellowstone National Park and Central Idaho, Gray Wolf EIS, Post Office Box 8017, Helena, Montana 59601.

FOR FURTHER INFORMATION CONTACT: Ed Bangs, U.S. Fish and Wildlife Service, Yellowstone National Park and Central Idaho, Gray Wolf EIS, Post Office Box 8017, Helena, Montana 59601, (406) 449–5225.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the draft EIS may be obtained by contacting the above address. Copies of the summary draft EIS are also available.

Copies are also available for inspection at all Public and High School Libraries in the States of Montana, Idaho, and Wyoming. They are also available in all Public Libraries in Seattle, Washington; Denver, Colorado; Salt Lake City, Utah; and Washington, DC.

Public Hearings are scheduled as listed below:

Date	Location
August 25, 1993.	Bozeman, Montana, Missoula, Montana, Dillon, Montana.
August 31, 1993.	Coeur D'Alene, Idaho, Lewiston, Idaho, Idaho Falls, Idaho.
September 1, 1993.	Jackson Hole, Wyoming, Riverton, Wyoming, Cody, Wyoming.
September 27, 1993.	Cheyenne, Wyoming, Boise, Idaho, Helena, Montana.
September 28, 1993.	Salt Lake City, Utah, Seattle, Washington, Denver, Colorado,
September 30, 1993.	Washington, D.C.

The exact time and location of these hearings will be published in a future notice.

Dated: July 9, 1993.

Jonathan Deason,

Director, Office of Environmental Affairs.

[FR Doc. 93–16739 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NV–030–4333–04]

Temporary Closure of Certain Public Lands in the Carson City District for Management of the 1993 Running of the V.O.R.R.A. "Fallon 250" Off-Highway Vehicle (OHV) Race

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of certain public lands in Churchill County, Nevada, on and adjacent to the 1993 "Fallon 250" race course on July 31, 1993. Access will be limited to race officials, entrants, law enforcement and emergency personnel, BLM personnel monitoring the event, licensed permittee(s) and right-of-way grantees.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the official running of the 1993 "Fallon 250" OHV Race.

EFFECTIVE DATE: July 31, 1993.

FOR FURTHER INFORMATION CONTACT: Terry Knight, Outdoor Recreation Planner, Carson City District Office, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706–0638. Telephone (702) 885–6100.

SUPPLEMENTARY INFORMATION: Certain public lands in the Carson City District, Churchill County, Nevada, will be temporarily closed to public access on July 31, 1993, to protect persons,

property, and public land resources on and adjacent to the 1993 "Fallon 250" OHV race, permit number NV–3414–3–15. Specific restrictions and closure information are as follows:

1. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1993 "Fallon 250" OHV race course. These lands are within T.17N., R.30E.; T.17N., R.31E.; T.16N., R.30E.; T.16N., R.31E.; T.16N., R.32E.; T.15N., R.31 ½E.; T.15N., R.32E.; and T.15N., R.33E., M.D.M. A map of the race course may be obtained from Terry Knight at the contact address. The event permittee is required to mark and monitor the race course during this closure period.

2. From 9 a.m. to 11:59 p.m., Saturday, July 31, 1993, the race course and those public lands 300 feet to either side of the course are closed to the public, except for designated check points and spectator areas.

3. Areas from which spectators may view the event are confined to the start/finish area in NE¼ SE¼ Section 9 and NW¼ SW¼ Section 10, T.16N., R. 32E., M.D.M., and check points 1, 2, 3 and 4, identified on the map of the race course. All public spectator vehicles operating within these designated areas shall maintain a maximum speed of 10 MPH. Spectators shall remain in safe locations as directed by event officials or BLM personnel.

The above restrictions do not apply to race officials, law enforcement and emergency personnel, or BLM personnel monitoring the event.

Authority for closure of public lands is found in 43 CFR part 8341, 43 CFR part 8364 and 43 CFR part 8372. Any person who fails to comply with this closure order may be subject to the penalties provided in 43 CFR 8360.7.

Dated: June 30, 1993.

Daniel L. Jacquet,

Acting District Manager.

[FR Doc. 93–16718 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–HC–M

[NV–030–5101–10–XFKL; N–51606]

Extension of Public Comment Period for the Draft Bedell Flat Pipelines Rights-of-Way Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Public comment period extension.

SUMMARY: The Bureau of Land Management (BLM) has extended the public comment period for the Draft Environmental Impact Statement (EIS) on the Bedell Flat pipelines rights-of-way. The EIS analyzes the impacts of a proposal by Washoe County, Nevada, for pipeline rights-of-way across public land to accommodate a portion of the facilities needed for Washoe County's project to transport water from eastern Honey Lake Valley, Nevada, through Bedell Flat to Lemmon Valley, Nevada.

DATES: The comment period has been extended from July 23, 1993, to September 22, 1993.

ADDRESSES: Please address written comments to: James M. Phillips, Lahontan Area Manager, Bureau of Land Management, 1535 Hot Springs Rd., Suite 300, Carson City, NV, 89706–0638.

FOR FURTHER INFORMATION CONTACT: David Loomis, EIS Project Manager, at the above address or telephone (702) 885–6149.

SUPPLEMENTARY INFORMATION: Copies of the Draft EIS are available for review at public libraries in Washoe County, Nevada and Lassen County, California; the Nevada State Library in Carson City; and the libraries of the University of Nevada, Reno; the University of Nevada, Las Vegas; and Lassen Community College in Susanville, California. A limited number of copies are available from the Carson City District Office, 1535 Hot Springs Road, suite 300, Carson City, Nevada, 89706–0638; phone (702) 885–6100. Public reading copies are available for review at the following BLM locations.

Nevada State Office, 850 Harvard Way, Reno, Nevada 89520

California State office, 2800 Cottage Way, room E–2841, Sacramento, California 95825

Carson City District Office, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706

Susanville District Office, 705 Hall Street, Susanville, California 96130

Eagle Lake Resource Area, 471–850 Johnstonville Drive, Susanville, California 96130

Dated: July 8, 1993.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93–16758 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–HC–M

[NV–030–03–4320–2]

Carson City District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Carson City District Grazing Advisory Board.

SUMMARY: The Carson City District Grazing Advisory Board will conduct a range field tour on August 19, 1993. Board members will meet at the Carson City District Office located at 1535 Hot Springs Road, suite 300, Carson City, Nevada, at 9 a.m., on the 19th. The tour is open to the public. All members of the public must provide their own transportation and lunch. The primary topics will be the Carson City Rangeland Success Story and the evaluation and proposed Winnemucca Ranch Multiple-Use Decision. Members of the public wishing to take part in this tour should notify the Carson City District Office no later than August 10, 1993.

FOR FURTHER INFORMATION CONTACT: Jim Gianola, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706, phone: (703) 885–6140.

Dated this 30th day of June, 1993.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 93–16719 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–HC–M

[WY–060–93–4320–01]

Casper District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Casper District Grazing Advisory Board.

SUMMARY: The Casper District Grazing Advisory Board will meet at 8 a.m. on August 10, 1993. The meeting will convene at the Casper District Office, 1701 East "E" Street, Casper, Wyoming.

The agenda will consist of a progress report on range improvement projects. The public comment portion is scheduled for 8:45 a.m., or shortly after. Interested persons may appear and comment or submit written statements for board consideration.

DATES: August 10, 1993.

FOR FURTHER INFORMATION CONTACT: To request summary minutes or time on the agenda, contact: Kate Padilla, Bureau of Land Management, 1701 East "E" Street, Casper, Wyoming 82601, (307) 261–7500.

SUPPLEMENTARY INFORMATION: The meeting is held in accordance with section 3, Executive Order 12548 of February 14, 1986. The meeting is open to the public.

Summary minutes of the board meeting will be maintained in the district office and will be available for public inspection within 30 days following the meeting.

Dated: July 9, 1993.

Mike Karbs,

District Manager.

[FR Doc. 93–16759 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–22–M

[WY–030–03–4333–01]

Rowlins District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of Rawlins District Advisory Council.

SUMMARY: This notice sets forth the schedule and proposed agenda of the meeting and field tour of the Rawlins District Advisory Council.

DATES: August 18, 1993, 9 a.m. to 5 p.m.

ADDRESSES: Bureau of Land Management, Rawlins District Office, 1300 North Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Mary Apple, Public Affairs Specialist, Rawlins District Office, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301, (307) 324–7171.

SUPPLEMENTARY INFORMATION: The meeting will begin at the Virginian Hotel, Medicine Bow, Wyoming and will proceed to a tour of Shirley Mountain. The agenda of the meeting will include:

1. Introduction and opening remarks.
2. Review of last Council meeting.
3. Public comment period.
4. Tour of Shirley Mountain, discussion of Shirley Mountain Management Plan and other district issues.

The meeting and tour are open to the public. Anyone interested in attending the meeting or making an oral presentation should notify the District Manager by August 2, 1993. Written statements may also be filed for the Council's consideration. Summary minutes of this meeting will be on file in the Rawlins District Office and available for public inspection (during regular business hours) within 30 days of the meeting.

Dated: July 6, 1993.

Alan Pierson,

District Manager.

[FR Doc. 93–16720 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–22–M

[AZ–020–4210–04; AZA–27950]

Public Land Disposal, Maricopa County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: All or part of the following described sections containing federal lands are being considered for disposal by sale or exchange pursuant to sections 203 and 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 3N., R. 5 W.,
Sec. 14, NE¼, E½SE¼,
Sec. 22 (All),
Sec. 23, S½,
Sec. 25, (All),
Sec. 26, W½,
Sec. 27, (All),
Sec. 34, W½,
Sec. 35, W½.
Comprising 3,440 acres, more or less.

Final determination on disposal will await completion of an environmental analysis. In accordance with the regulations of 43 CFR 2201.1(b) and 2711.1–2(d), publication of this notice will segregate the affected public lands for appropriation under the public land laws, including the mining laws, subject to valid existing rights but not the mineral leasing laws or from sale or exchange pursuant to the Federal Land Policy and Management Act of 1976.

In addition, the lands will continue to be unavailable for livestock grazing pursuant to the grazing regulations at 43 CFR 4100.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

Dated: July 7, 1993.

G.L. Cheniae,

District Manager.

[FR Doc. 93–16791 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–32–M

[NV–030–03–4210–05; NVN 56124]

Realty Action; Lease of Public Land in Douglas County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Initiation of a 45 day public comment period on the proposed classification of public land for recreation and public purposes.

SUMMARY: Pursuant to the authority in the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), a 45 day public comment period is initiated on the following land proposed to be classified as suitable for lease and sale to Douglas County for a model airplane flying field:

Mt. Diablo Meridian, Nevada

T. 12 N., R. 21 E.
Sec. 18, S½S½NE¼NW¼.
Containing 10.00 acres.

SUPPLEMENTARY INFORMATION: The public land is located four miles southeast of Gardnerville at the Douglas County fairgrounds. The land is not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Those rights for telephone line purposes granted to the Continental Telephone Company of California by Permit No. NVN 43319.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

DATES: Interested parties may submit comments on or before August 30, 1993.

ADDRESSES: Written comments should be sent to: Walker Resource Area Manager, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, NV 89706–0638. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, Walker Area Realty Specialist, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, NV 89706–0638; (702) 885–6000.

Dated: July 1, 1993.

S. atWater Weiss,

Acting Walker Resource Area Manager.

[FR Doc. 93–16721 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–4210–05; N–52051]

Realty Action: Lease/Purchase for Recreation and Public Purposes, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/purchase.

SUMMARY: The following described public land in the vicinity of Glendale, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the provisions of the Recreation and Pubic Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Nevada Department of Transportation proposes to use the land for a maintenance station with equipment and storage area.

Mount Diablo Meridian, Nevada

T. 14 S., R. 67 E.,
Sec. 32: S½SE¼SE¼NW¼,
SE¼SW¼SE¼NW¼,
N½NE¼NE¼SW¼,
NE¼NW¼NE¼SW¼.

Containing 15.00 acres, more or less.

The land is not required for any federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest. The lease, when issued, will be subject to the provisions of the Recreation and Pubic Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Those rights for an federal highway which have been granted to the Nevada Department of Transportation by Permit No. NEV–052889 under the Act of August 27, 1958.

2. Those rights for an interstate highway which have been granted to the Nevada Department of Transportation by Permit No. CC–018310 under the Act of September 14, 1934.

3. Those rights for an interstate highway which have been granted to the Nevada Department of Transportation by Permit No. CC–020826 and CC–020836 under the Act of January 28, 1941.

4. Those rights for an interstate highway which have been granted to the Nevada Department of Transportation by Permit No. CC–020886 under the Act of October 15, 1940.

5. Those rights for a material site which have been granted to the Nevada Department of Transportation by Permit No. N–051854 Under the Act of August 28, 1958.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/purchase until after the classification becomes effective.

Dated: July 2, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93–16722 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–HC–M

[CA–940–4210–06; CACA–30123]

Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 2,042.04 acres of public and non-Federal lands in Lassen County to protect the Ash Valley Research Natural Area/Area of Critical Environmental Concern. The notice closes the public lands for up to 2 years from surface entry and mining. The lands will remain open to mineral leasing.

DATES: Comments should be received by October 13, 1993.

ADDRESSES: Comments should be sent to State Director, BLM California State Office, 2800 Cottage Way, room E–2845, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: John Beck, BLM California State Office, 916–978–4820.

SUPPLEMENTARY INFORMATION: On May 25, 1993, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 37N., R. 11 E.,
Sec. 5, lots 1, 2, 4, S½NE¼, SW¼NW¼, SW¼, and W½SE¼;
Sec. 8, W½NE¼, N¼NW¼, and S½;
Sec. 9, NE¼SW¼, S½SW¼, and SE¼.
T. 38N., R. 11 E.,
Sec. 32, SW¼SW¼, and SE¼SE¼.

The area described contains 1,321.51 acres in Lassen County.

The petition was also approved allowing the Bureau of Land Management to file an application to withdraw the following described Federal minerals (private surface) from the mining laws. In the event the following private lands return to Federal ownership, the surface estate would also become subject to the withdrawal.

Mount Diablo Meridian

T. 37N., R. 11 E.,
Sec. 4, SW¼NW¼;
Sec. 5, E½SE¼;
Sec. 8, E½NE¼;
Sec. 9, NW¼NW¼, S½NW¼, and NW¼SW¼.

The areas described aggregate 360 acres in Lassen County.

The petition was also approved allowing the Bureau of Land Management to file an application to withdraw the following described non-Federal lands (private surface and private minerals). In the event the non Federal lands (private surface and private minerals) return to Federal ownership, the lands would become subject to the withdrawal.

T. 37N., R. 11 E.,
Sec. 4, W½SW¼;
Sec. 5, lot 3 and SE¼NW¼;
Sec. 8, S½NW¼;
Sec. 9, NE¼NW¼.
T. 38 N., R. 11 E.,

Sec. 32, SE¼SW¼ and SW¼SE¼.

The areas described aggregate 360.53 acres in Lassen County.

The purpose of the proposed withdrawal is to protect and preserve the rare and sensitive plants and other unique resource values of the Ash Valley Research Natural Area/Area of Critical Environmental Concern.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connections with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or other discretionary land use authorizations of a temporary nature.

Dated: July 2, 1993.

Dianna L. Storey,

Acting Chief, Lands Section.

[FR Doc. 93–16723 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–40–M

[OR–943–4210–06; GP3–297; ORE–016183]

Proposed Continuation of Withdrawal; Oregon; Correction

The land description in FR Doc. 93–7550, published on page 17280, in the issue of Thursday, April 1, 1993, is hereby corrected as follows:

On page 17280, under Darby Creek recreation site reads "Sec. 15", and is corrected to read "Sec. 35".

Dated: July 2, 1993.

Champ C. Vaughan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–16724 Filed 7–14–93; 8:45 am]

BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–572 (Final)]

Certain Special Quality Carbon and Alloy Hot-Rolled Steel Bars and Semifinished Products From Brazil

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Brazil of certain special quality carbon and alloy hot-rolled steel bars and semifinished products, provided for in subheadings 7207.11.00, 7207.12.00, 7207.19.00, 7207.20.00, 7214.30.00, 7214.40.00, 7214.50.00, 7214.60.00, 7224.10.00, 7224.90.00, and 7228.30.80 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective January 11, 1993, following a preliminary determination by the Department of Commerce that imports of certain special quality carbon and alloy hot-rolled steel bars and semifinished products from Brazil were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 3, 1993 (58 FR 6976). The hearing was held in Washington, DC, on June 2, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

Issued: July 12, 1993.

By order of the Commission.

Donna R. Koehnke

Secretary.

[FR Doc. 93–16805 Filed 7–14–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–350]

Sputtered Carbon Coated Computer Disks and Products Containing Same, Including Disk Drives; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Seagate Technology, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on July 9, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be

directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: July 9, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–16806 Filed 7–4–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6212.

Comments on the following assessment are due 15 days after the date of availability:

AB–6 (Sub-No. 250X) Burlington Northern RR. Co.—Abandonment Exemption—in Okanogan County, WA. EA available July 9, 1993.

AB–55 (Sub-No. 409X), CSX Transportation, Inc.—Abandonment Exemption—in Richmond County, NC. EA available July 9, 1993.

Comments on the following assessment are due 30 days after the date of availability;

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16771 Filed 7–14–93; 8:45am]

BILLING CODE 7035–01–M

[Finance Docket No. 32309]

New Hampshire Central Railroad, Inc. Modified Rail Certificate

On June 3, 1993, the New Hampshire Central Railroad, Inc. (NHCR) filed a notice for a modified rail certificate of public convenience and necessity to operate 22.96 miles or rail line between milepost 00.00 (MP MEC–131.75) at North Stratford, NH and milepost 22.96 (MP MEC–154.71) at Beecher Falls, VT.

The line of rail is owned by the State of New Hampshire (State).[1] NHCR has entered into a 5-year agreement with the State to commence operations over that portion of the line between milepost 00.00 (MP MEC–131.75) at North Stratford, NH and milepost 09.25 (MP MEC–141.00) at Columbia Bridge, NH, a distance of 9.25 miles. NHCR was to commence operations on or about June 1, 1993. Should traffic warrant, a supplemental agreement will be entered into by the parties for operations by NHCR over that portion of the rail line between milepost 09.25 (MP MEC–141.00) at Columbia Bridge, NH and milepost 22.96 (MP–MEC–154.71) at Beecher Falls, VT.

The line of railroad has been operated by the North Stratford Railroad Corporation (NSRC) pursuant to a certificate and decision, in Finance Docket No. 28553, North Stratford Railroad Corporation—Operation—At North Stratford, New Hampshire, and Beecher Falls, VT (not printed), served October 17, 1978. NSRC apparently ceased most operations in the Spring of 1989 because of a diversion of traffic to motor carriers by its principal customer, Ethan Allen Furniture Co., and because of an embargo on the line. Our records show that NSRC has never sought Commission approval to discontinue operations, Consequently NSRC retains its common carrier obligation to provide freight service.[2]

This decision results in both NSRC and NHCR being authorized to operate the line. However, we are not concerned that two carriers are "authorized" to operate the line, given that there is no evidence of record indicating that future operations will be conducted by more than one carrier at a time. Cf. Finance Docket No. 32162, Indiana Hi-Rail Corp.—Lease and Operation Exemption—Norfolk and Western Railway (not printed), served March 31, 1993, and Finance Docket No. 32049, *et al.*, Cheatham County Rail Authority "Application and Petition" for Adverse Discontinuance (not printed), served August 31, 1992.

The Commission will serve a copy of this notice on the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: July 8, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16770 Filed 7–14–93; 8:45 am]

BILLING CODE 7035–01–M

[1] The involved line of railroad is a portion of the Maine Central Railroad Company line approved for abandonment in Docket No. AB–83, Maine Central Railroad Company—Abandonment Between Carroll, New Hampshire, and Canaan, Vermont, in Coos County, New Hampshire, and Essex County, Vermont (not printed), served June 16, 1976. A certificate of abandonment, subject to the sale of the involved line to the State of New Hampshire, was served January 27, 1977.

[2] If NSRC has discontinued its operations and wants to be relieved from its common carrier obligation, it must file an appropriate application for discontinuance under 49 U.S.C. 10903 and 10904 or seek an exemption.

[Docket No. AB–6; Sub-No. 347X]

Burlington Northern Railroad Company—Abandonment and Discontinuance of Trackage Rights Exemption—In Greene, Sumter, Choctaw, Washington, and Mobile Counties, Al

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Burlington Northern Railroad Company of a 123.40-mile rail line between milepost 728.0, at or near York, and milepost 851.40, at or near Bucks, in Sumter, Choctaw, Washington, and Mobile Counties, AL, and the discontinuance of its trackage rights over 27.32 miles of Norfolk Southern line between milepost 240.90, at or near Boligee, and milepost 268.22, at or near York, in Greene and Sumter Counties, AL, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 14, 1993. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by July 25, 1993, petitions to stay must be filed by July 30, 1993, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by August 4, 1993, and petitions to reopen must be filed by August 9, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB-6 (Sub-No. 347X) to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423,

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

and (2) Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw (202) 927-5610. [TDD for hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927-5721.]

Decided: July 6, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16772 Filed 7–14–93, 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; United States v. Union Tank Car Co.

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029 (July 17, 1973), notice is hereby given that on July 6, 1993, a proposed Consent Decree in *United States of America* v. *Union Tank Car Company*, Civil Action No. CV91–2100, was lodged with the United States District Court for the Western District of Louisiana.

In 1991, a Complaint in this action was filed by the United States of America against Union Tank Car Company under sections 301 and 309(a) of the Clean Water Act, 33 U.S C. 1311 and 1319(a), in connection with Union Tank Car's discharge of pollutants into navigable waters of the United States at its facility located near Ville Platte, Louisiana.

The proposed Consent Decree entered between the United States and Union Tank Car provides for payment of a civil penalty in the amount of $350,000 to the United States. The Consent Decree also requires the defendant to construct a wastewater treatment plant on its facility and to finance a sewer connection between its facility and the City of Ville Platte Publicly Owned Treatment Works, for disposal of the defendant's sanitary and industrial wastewater generated at its facility.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Union Tank Car Company*, DOJ Ref. No. 90–5–1–1–3211.

The proposed Consent Decree may be examined at the office of the United States Attorney General, Western District of Louisiana, FNB Tower, 600 Jefferson Street, suite 1000, Lafayette, Louisiana 70501–7502, the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed 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 $5.25 (25 cents per page reproduction charge) payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division

[FR Doc. 93–16725 Filed 7–14–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984—National Information Technology Center of Maryland, Inc.

Notice is hereby given that, on June 8, 1993, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S C. 4301 *et seq.* ("the Act"), the National Information Technology Center of Maryland, Inc., ("NITC"), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies have become members of NITC: Ballard, Spahr, Andrews & Ingersoll, Washington, DC; Blue Cross and Blue Shield of Rhode Island, Providence, RI; Bryan Cave, Washington, DC, Dayton T. Brown, Inc., Bohemia, NY; Khafre Systems International, Inc., Silver Spring, MD; Landmark Systems Corporation, Vienna, VA; Man Made Systems, Ellicott City, MD; Martin Marietta Laboratories of the Martin Marietta Corporation, Baltimore, MD; OAO Corporation, Greenbelt, MD; The World Bank, Washington, DC, U.S. West, Inc., Advanced Technology Division, Boulder, CO.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NITC intends to file additional written notification disclosing all changes in membership.

On September 12, 1991, NITC, then known as the Maryland Information Technologies Center, Inc., filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on October 22, 1991, (56 FR 54,586).

The last notification was filed with the Department on March 10, 1993. A notice was published in the Federal Register pursuant to section 6(b) of the Act of April 22, 1993, (58 FR 21,598).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–16789 Filed 7–14–93; 8:45 am]

BILLING CODE 4410–01–M

Immigration and Naturalization Service

[INS No. 1626–93]

Intent to Prepare a Draft Programmatic Environmental Impact Statement for Operations of Joint Task Force Six

AGENCY: The Immigration and Naturalization Service, Justice. Joint Task Force Six (JTF–6), Environmental Protection Agency.

ACTION: Notice of intent.

SUMMARY: This Notice is to announce the preparation of a Draft Programmatic Environmental Impact Statement (PEIS) for the anticipated activities and effects of Department of Defense Joint Task Force Six (JTF–6) in support of the Immigration and Naturalization Service (INS). Anticipated activities might include: reconnaissance operations, building and renovation of roads and radio towers along the United States southwest land border.

DATES: To be considered in the Draft PEIS, written comments and suggestions should be received not later than August 30, 1993.

ADDRESSES: To be included on the current mailing list or to forward written comments, please write to the following address: U.S. Army Corps of Engineers, Fort Worth District, ATTN: CESWF–PL–RE (Eric Verwers), P.O. Box 17300, Fort Worth, Texas 76102–0300

FOR FURTHER INFORMATION CONTACT: Eric Verwers, Environmental Resource Specialist, U.S. Army Corps of Engineers, P.O. Box 17300, 819 Taylor Street, Forth Worth, TX 76102–0300, telephone (817) 334–3246.

SUPPLEMENTARY INFORMATION:

Background

Since the late 1800's, the Immigration and Naturalization Service (INS) has been responsible for the protection of the Nation's borders from smuggling and unlawful entry of illegal aliens into the United States. This task has primarily been accomplished by the Border Patrol. Because of the increase in drug smuggling operations, the Border Patrol has been designated the primary law enforcement agency responsible for narcotics interdiction between all of the United States land ports of entry.

JTF–6 was activated November 13, 1989, at Fort Bliss, Texas by the Secretary of Defense in accordance with the President's National Drug Control Strategy. The thrust of this program is the use of Department of Defense training resources in the support of agencies responsible for the fight against illegal drugs.

The mission of JTF–6 is to plan and coordinate military operations and training along the United States southwest land border in support of counterdrug activities by Federal, State, and local law enforcement agencies, as requested through Operation Alliance and approved by the Secretary of Defense or a designated representative. The actions performed by JTF–6 personnel are quite diverse, ranging from reconnaissance operations to the building and renovation of roads and radio towers.

Alternative: No Action.

Scope: The PEIS will provide a general assessment of the expected impacts from the various types of JTF–6 activities, including possible cumulative impacts. The PEIS will develop procedures that will identify the need for documentation in accordance with the National Environmental Policy Act (NEPA) of 1969, Public Law 91–190, as amended, for other specific activities as they occur.

The INS and other Federal, state, and local law enforcement agencies will be able to develop supplemental PEISs or incorporate the PEIS to a site specific Environmental Assessment, as allowed by NEPA, for activities or locations not specifically addressed in the PEIS. Approximately 75% of the JTF–6 actions that require environmental assessment are for the INS.

Invitation to Participate/Scoping Process Comments received as a result of this notice will be used to assist INS in identifying impacts to the quality of the human environment. Scoping meetings will be held along the United States-Mexico Border to identify alternatives and significant issues related to the proposed action. Times and dates will be published in local newspapers and made available to current mailing lists. Individuals or organizations may participate in the scoping process by providing written comments or by attending the scoping meetings.

Dated: July 8, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–16786 Filed 7–14–93; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Committee of Visitors of the Developmental Mechanisms Program; 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: Committee of Visitors of the Developmental Mechanisms Program; Division of Integrative Biology and Neuroscience.

Date and Time August 4–6, 1993; 8:30 a.m.–5 p.m. each day.

Place. Room 1243, NSF, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr Bruce Umminger, Division Director, Division of Integrative Biology and Neuroscience, Room 321, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7905.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda. To provide oversight review of the Departmental Mechanisms Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: July 12, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–16807 Filed 7–14–93; 8:45 am]

BILLING CODE 7555–01–M

Ocean Sciences Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Ocean Sciences Review Panel.

Date and Time: August 3–4, 1993, 9 a.m.

Place. St. James Hotel, 950 24th St., NW, Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Paul Dauphin, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7837.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda To review and evaluate Ocean Drilling proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: July 12, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–16808 Filed 7–14–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; 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 Undergraduate Education.

Date And Time August 17, 1993; 7.30 a.m. to 9 p.m.; August 18, 1993; 8:30 a.m. to 5 p.m.; August 19, 1993; 8:30 a.m. to 5 p.m.; August 20, 1993, 8:30 a.m. to 5 p.m.

Place The Grand Hotel, 2350 M Street, NW., Washington, DC 20037.

Type Of Meeting: Closed.

Contact Person. Dr Terry Woodin, Program Director; National Science Foundation; 1800 G Street, NW., room 1210; Washington, DC; Telephone: (202) 357–7051

Purpose Of Meeting. To provide advice and recommendations concerning proposa' submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the

Collaboratives for Excellence in Teacher Preparation program.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: July 12, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–16830 Filed 7–14–93; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF MANAGEMENT AND BUDGET

Circular A–25, "User Charges"

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Revision of Circular No. A–25, "User Charges"

SUMMARY: Circular No. A–25 establishes guidelines for Federal agencies to assess fees for Government services and for the sale or use of Government property or resources.

EFFECTIVE DATE: July 15, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah Saunders, Budget Analysis Branch, Room 6025, New Executive Office Building, Office of Management and Budget, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: The authority for charging user fees is provided by Title V of the Independent Office Appropriations Act of 1952 (IOAA), codified at 31 U.S.C. 9701. Circular No. A–25 was last issued in 1959. This revision is consistent with the authority provided in Title V of the IOAA, as interpreted by the courts, and is not intended to expand this authority. Rather the revision seeks only to clarify Federal policy in light of thirty years of experience and to update the procedures by which agencies are to institute charges.

With the printing of this Circular in final form, the Office of Management and Budget (OMB) expects agencies to develop regulations and/or legislation, as appropriate, implementing its guidance in setting new user fees or revising existing fees.

Changes Adopted in the Final Revision

This document makes the following changes and revisions to Circular A–25, last published in September 1959:

1. Charges should be set based on market conditions for products and services provided by business-type activities while charges for all other government services or products should be based on full-cost recovery. Section 6a(2)(b), which provides for market prices for business-type activities, is based on section 3b of the 1959 Circular, which provided for market prices for the sale or lease of federally owned resources or property. Such pricing was upheld in *Yosemite Park and Curry Co.* v. *United States,* 686 F.2d 925, 932–35 (Ct. Cl. 1982).

2. Whenever possible, charges should be set as rates rather than fixed dollar amounts in order to reflect changes in costs to the Government or changes in market prices of the property, resource or service provided.

3. As has always been the case, user charges should be assessed when a service provides special benefits to an identifiable recipient beyond those that accrue to the general public. *Compare* section 6a(1), (4) of the revised Circular *with* Section 3a(1)–(2) of the 1959 Circular. This revision to the Circular adds language—in section 6a(3)—to make explicit several principles that have been inherent in this general test. For example, the update makes clear that, when the general public also receives "incidental" benefits, the user charge should recover full cost rather than a prorated amount. Section 6a(3) is discussed further below (see Comments Received).

4. The number of specified exceptions Federal agencies can grant to the general guidelines is reduced. However, agencies may recommend additional exceptions subject to OMB approval.

5. This revision encourages agency review of specific statutory authority, in addition to the generic Independent Offices Appropriations Act, to determine whether the authority for implementation of any desired fee exists.

6. A new section is included on developing legislation when legal impediments to user charges exist. This section also includes a discussion of the conditions under which the appropriate legislative proposal would be an excise tax rather than a user charge.

8. Agencies are directed to review charges biennially and update them as necessary.

Comments Received

Notice of the proposed revision was published for comment in the **Federal Register** on January 21, 1992 (57 FR 2293). Comments from concerned parties were due by February 15, 1992. OMB received 15 comments from Federal agencies, interest groups and private industry.

1. Several commenters objected to proposed section 6a(3). They contended that it departs from the test in the 1959 Circular for when user charges should be assessed (section 3a(1)–(2)). They also contended that it sets forth an inappropriate standard under which a user charge would be assessed for a service that not only provides a special benefit to identifiable recipients but also provides incidental benefits to the general public.

Contrary to the commenters' objections, section 6a(3) does not depart from the traditional test in the Circular for when user charges should be assessed, and it does not establish an inappropriate standard for assessing user charges. Rather, as explained below, section 6a(3) states explicitly principles that have been inherent in the Circular, been applied by agencies over the years in assessing user charges, and been upheld by the courts when those user charges were challenged. Accordingly, we have adopted section 6a(3) in this revision to the Circular.

Foremost among the principles stated in section 6a(3) is that agencies shall assess a user charge for services that provide special benefits to an identifiable recipient even when those services also provide incidental benefits to the general public. This principle proceeds from the general test for when user charges should be assessed, which had been in section 3a(1)–(2) of the 1959 Circular and is now in section 6a(1), (4). Under this test, a charge will be assessed when a service provides special benefits to an identifiable recipient beyond those that accrue to the general public, but will not be assessed when the identification of the specific beneficiary is obscure and the service can be considered primarily as benefitting broadly the general public. This test was upheld by the Supreme Court in *FPC* v. *New England Power Co.,* 415 U.S. 345, 349–51 (1974) (citing Circular No. A–25).

Applying this test, agencies over the years have assessed numerous user charges for services that not only provide special benefits to identifiable recipients, but also provide incidental benefits to the public. This is evident from the number of court cases in which a party challenged a user charge and in so doing advanced the argument offered by the commenters, namely, that—as one court characterized the challengers' argument—"the *public* interest in these activities is so strong that it is unfair to assess any of their cost against any private party." *Electronic Industries Ass'n* v. *FCC,* 554 F.2d 1109, 1113 (D.C. Cir. 1976). As the courts have recognized, if this argument were valid,

it "would mean that *no* federal agency could assess any fees, since all public agencies are constituted in the public interest." *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d 223, 229 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980).

Since such a result would be plainly inconsistent with Congress' authorization of user charges in the IOAA and other statutes, the courts have consistently rejected the argument. See *Ayuda, Inc.* v. *Attorney General*, 848 F.2d 1297, 1300 (D.C. Cir. 1988) ("Such fees may be assessed even when the service redounds in part to the benefit of the public as a whole."); *Phillips Petroleum Co.* v. *FERC*, 786 F.2d 370, 376 (10th Cir.), *cert. denied*, 479 U.S. 823 (1986) ("where an agency performs a service from which a regulated entity derives a 'special benefit,' it may charge a fee, even though the public also benefits"); *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d at 227–29; *Electronic Industries Ass'n* v. *FCC*, 554 F.2d at 1114 n.12, 1115–16; *National Cable Television Ass'n, Inc.* v. *FCC*, 554 F.2d 1094, 1103 (D.C. Cir. 1976).

Section 6a(3) also states the related principle that, for a service that provides incidental benefits to the public, the agency should not pro-rate the user charge by allocating any part of it to the public, but instead should charge those identifiable recipients who receive the special benefit the full cost of rendering the service. This principle follows from the direction in section 3a(1) of the 1959 Circular that "a charge should be imposed to recover the full cost to the Federal Government of rendering that service."

This principle of full-cost recovery is essential to achieving the aim of user charge statutes such as the IOAA. As one court explained, requiring an allocation of costs "would saddle agencies with the impossible task of sorting out public from private benefits, with the likely result that most agency fees would be reduced to mere tokens." *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d at 230. Accordingly, the courts have upheld user charges implementing the Circular's principle of full-cost recovery. *See Central & Southern Motor Freight Tariff Ass'n* v. *United States*, 777 F.2d 722, 732 (D.C. Cir. 1985) ("If the asserted public benefits are the necessary consequence of the agency's provision of the relevant private benefits, then the public benefits are not independent, and the agency would therefore not need to allocate any costs to the public."); *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d at 230 ("the NRC may recover the *full cost* of providing a service to an identifiable beneficiary, regardless of the incidental public benefits flowing from the provision of that service"); *Electronics Industries Ass'n* v. *FCC*, 554 F.2d at 1115 ("the Commission is not prohibited from charging an applicant or grantee the full cost of services rendered to an applicant which also result in some incidental public benefits"). In cases where, under section 6a(2)(b), the charge would be the market price, rather than the cost of rendering the service, the full market price is charged.

Finally, section 6a(3) states a third principle that has been inherent in the Circular and has been upheld by the courts. If a service provides the public a benefit that is *independent from*—rather than *incidental to*—the special benefit that the service provides an identifiable recipient, then the cost to the Federal Government of providing that independent public benefit is not included in the user charge. *See Central & Southern Motor Freight Tariff Ass'n* v. *United States*, 777 F.2d at 729–30; *Mississippi Power & Light Co.* v. *NRC*, 601 F.2d at 230; *Electronics Industries Ass'n* v. *FCC*, 554 F.2d at 1115.

In addition to objecting to section 6a(3) on general grounds, commenters also objected to the specific examples found in that provision of activities for which a user charge would be appropriate. Those examples were of processing a new drug application and inspecting farm products (the latter example was also used in the proposed section 6a(1)(b)). The commenters contended that these activities, in particular, should not be subject to user charges. To support their position, the commenters offered factual and legal arguments that were specifically addressed to each of those activities.

As the preamble to the proposal noted, examples were included in the Circular to clarify its intent and scope. 57 FR at 2294. However, given the comments we have received concerning those two particular examples, and since the agencies themselves are in the best position to apply the Circular's principles to the specific factual situations presented by their various activities, we have omitted those two examples from the revision of the Circular. We emphasize, however, that this omission does not express any view, one way or the other, as to whether a user charge should be assessed for those activities. Rather, as will be the case with any activity not specifically mentioned as an example in the Circular, the pertinent agencies will assess these activities on an individual basis and, in so doing, will apply the Circular's general principles and be guided by the extensive case law concerning user charges that has developed since the Circular was issued in 1959. We have also decided not to include in the text of the Circular other examples to illustrate the principles in section 6a(3). Instead, agencies seeking examples of how those principles are applied in practice can look to the court cases discussed above, in which the courts applied those principles to specific user charges. In addition, when questions arise as to the appropriateness of assessing a user charge for a particular activity, agencies may consult with OMB.

2. All the Federal agencies submitted comments suggesting the Circular conform with the Chief Financial Officers Act of 1990 (Pub. L. 101–576), which requires an agency CFO to biennially review fees, royalties, rents and other charges. The circular has been so revised to require biennial review of user charges by the CFO.

3. More detailed direction in estimating fringe benefit costs was requested. The Circular now directs each agency to estimate retirement costs as specified in Circular No. A–11 (Preparation and Submission of Budget Estimates).

4. The stated timing of collections for user charges in legislative proposals was questioned. The belief is that requiring collection of fees prior to or simultaneously with the provision of service is inconsistent with standard business practice. This requirement is included to conform to basic appropriations law which precludes fee collections other than prior to or simultaneously with provision of service unless appropriations and authority are provided in advance to allow reimbursable services.

5. It was suggested that agency heads or their designee be permitted to make user charge exceptions for activities with estimated annual collections under $10 million. Further, it was suggested, for such exceptions agency heads or their designee should be permitted to extend the exception. OMB will continue to review all user charge exceptions and extensions. OMB has reviewed exceptions and extensions, and has the mechanisms in place to continue to do so.

A suggestion was also made that the exception extension period be lengthened from four years to six years, to allow more time where legislative action is required. OMB believes the current four year extension period is sufficiently long to provide for any legislative action.

6. Certain comments contained specific questions regarding

interpretation of the Circular. The question was raised whether OMB intends the provisions of Circular A–25 be applied to "special benefits" provided to other Federal establishments. Circular A–25 is intended to apply to the provision of Government goods and services to the public, not other Federal establishments.

One commenter asked if, in the section where charging user fees based on market price is discussed, the example of leasing space in federally owned buildings was intended to restrict possible interpretations of services rendered. Market price should be charged in all circumstances in which the Government is not acting in its capacity as sovereign. The example used is just that, an example of a situation in which the Government, not acting in its capacity as sovereign, is providing a service under business-type conditions.

Again regarding market pricing, the question was asked whether a user fee should be assessed if the market price is less than full cost. The Circular states when the Government provides goods or services under business-type conditions, market price should be charged. When the Government, acting in its capacity as sovereign, provides a good or service, the user charge should be sufficient to cover the full cost to the Federal Government to provide the good or service. Exceptions may be granted for agencies to charge fees below market price or full cost. These exceptions will be granted by OMB on a case by case basis.

To the Heads of Executive Departments and Establishments

Subject. User Charges

1. *Purpose.* The Circular establishes Federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources. It provides information on the scope and types of activities subject to user charges and on the basis upon which user charges are to be set. Finally, it provides guidance for agency implementation of charges and the disposition of collections.

2. *Rescission.* This rescinds Office of Management and Budget Circular No. A–25, dated September 23, 1959, and Transmittal Memoranda 1 and 2.

3 *Authority.* Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701); 31 U.S.C. 1111; and Executive Orders No. 8248 and No. 11,541

4. *Coverage.*

a. The provisions of this Circular cover all Federal activities that convey special benefits to recipients beyond those accruing to the general public. The Circular does not apply to the activities of the legislative and judicial branches of Government, or to mixed-ownership Government corporations, as defined in 31 U.S.C. 9701.

b. The provisions of the Circular shall be applied by agencies in their assessment of user charges under the IOAA. In addition, this Circular provides guidance to agencies regarding their assessment of user charges under other statutes. This guidance is intended to be applied only to the extent permitted by law. Thus, where a statute prohibits the assessment of a user charge on a service or addresses an aspect of the user charge (e.g., who pays the charge; how much is the charge; where collections are deposited), the statute shall take precedence over the Circular. In such cases (e.g., sale or disposal under Federal surplus property statutes; or fringe benefits for military personnel and civilian employees), the guidance provided by the Circular would apply to the extent that it is not inconsistent with the statute. The same analysis would apply with regard to executive orders that address user charges.

c. In any case where an Office of Management and Budget circular provides guidance concerning a specific user charge area, the guidance of that circular shall be deemed to meet the requirements of this Circular. Examples of such guidance include the following: OMB Circular No. A–45, concerning charges for rental quarters; OMB Circular No. A–130, concerning management of Federal information resources; and OMB Circular No. A–97, concerning provision of specialized technical services to State and Local governments.

5 *Objectives.* It is the objective of the United States Government to:

a. Ensure that each service, sale, or use of Government goods or resources provided by an agency to specific recipients be self-sustaining;

b. Promote efficient allocation of the Nation's resources by establishing charges for special benefits provided to the recipient that are at least as great as costs to the Government of providing the special benefits, and

c. Allow the private sector to compete with the Government without disadvantage in supplying comparable services, resources, or goods where appropriate.

6. *General policy.* A user charge, as described below, will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. When the imposition of user charges is prohibited or restricted by existing law, agencies will review activities periodically and recommend legislative changes when appropriate. section 7 gives guidance on drafting legislation to implement user charges.

a. *Special benefits.*

(1) Determining when special benefits exist. When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full cost to the Federal Government for providing the special benefit, or the market price). For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service:

(a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); or

(b) Provides business stability or contributes to public confidence in the business activity of the beneficiary (e.g., insuring deposits in commercial banks); or

(c) Is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (e.g., receiving a passport, visa, airman's certificate, or a Custom's inspection after regular duty hours).

(2) Determining the amount of user charges to assess.

(a) Except as provided in section 6c, user charges will be sufficient to recover the full cost to the Federal Government (as defined in section 6d) of providing the service, resource, or good when the Government is acting in its capacity as sovereign

(b) Except as provided in section 6c, user charges will be based on market prices (as defined in section 6d) when the Government, not acting in its capacity as sovereign, is leasing or selling goods or resources, or is providing a service (e.g., leasing space in federally owned buildings). Under these business-type conditions, user charges need not be limited to the recovery of full cost and may yield net revenues.

(c) User charges will be collected in advance of, or simultaneously with, the rendering of services unless appropriations and authority are

provided in advance to allow reimbursable services.

(d) Whenever possible, charges should be set as rates rather than fixed dollar amounts in order to adjust for changes in costs to the Government or changes in market prices of the good, resource, or service provided (as defined in section 6d).

(3) In cases where the Government is supplying services, goods, or resources that provide a special benefit to an identifiable recipient and that also provide a benefit to the general public, charges should be set in accordance with paragraph (2) of section 6a. Therefore, when the public obtains benefits as a necessary consequence of an agency's provision of special benefits to an identifiable recipient (i.e., the public benefits are not independent of, but merely incidental to, the special benefits), an agency need not allocate any costs to the public and should seek to recover from the identifiable recipient either the full cost to the Federal Government of providing the special benefit or the market price, whichever applies.

(4) No charge should be made for a service when the identification of the specific beneficiary is obscure, and the service can be considered primarily as benefiting broadly the general public.

b. *Charges to the direct recipient.* Charges will be made to the direct recipient of the special benefit even though all or part of the special benefits may then be passed to others.

c. *Exceptions.*

(1) Agency heads or their designee may make exceptions to the general policy if the provision of a free service is an appropriate courtesy to a foreign government or international organization; or comparable fees are set on a reciprocal basis with a foreign country.

(2) Agency heads or their designee may recommend to the Office of Management and Budget that exceptions to the general policy be made when:

(a) The cost of collecting the fees would represent an unduly large part of the fee for the activity; or

(b) Any other condition exists that, in the opinion of the agency head or his designee, justifies an exception.

(3) All exceptions shall be for a period of no more than four years unless renewed by the agency heads or their designee for exceptions granted under section 6c(1) or the Office of Management and Budget for exceptions granted under section 6c(2) after a review to determine whether conditions warrant their continuation.

(4) Requests for exceptions and extensions under paragraphs (2) and (3) of section 6c shall be submitted to the Director of the Office of Management and Budget.

d. *Determining full cost and market price.*

(1) "Full cost" includes all direct and indirect costs to any part of the Federal Government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of:

(a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement. Retirement costs should include all (funded or unfunded) accrued costs not covered by employee contributions as specified in Circular No. A–11.

(b) Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment. If imputed rental costs are applied, they should include:

(i) Depreciation of structures and equipment, based on official Internal Revenue Service depreciation guidelines unless better estimates are available; and

(ii) An annual rate of return (equal to the average long-term Treasury bond rate) on land, structures, equipment and other capital resources used.

(c) The management and supervisory costs.

(d) The costs of enforcement, collection, research, establishment of standards, and regulation, including any required environmental impact statements.

(e) Full cost shall be determined or estimated from the best available records of the agency, and new cost accounting systems need not be established solely for this purpose.

(2) "Market price" means the price for a good, resource, or service that is based on competition in open markets, and creates neither a shortage nor a surplus of the good, resource, or service.

(a) When a substantial competitive demand exists for a good, resource, or service, its market price will be determined using commercial practices, for example:

(i) By competitive bidding; or

(ii) By reference to prevailing prices in competitive markets for goods, resources, or services that are the same or similar to those provided by the Government (e.g., campsites or grazing lands in the general vicinity of private ones) with adjustments as appropriate that reflect demand, level of service, and quality of the good or service.

(b) In the absence of substantial competitive demand, market price will be determined by taking into account the prevailing prices for goods, resources, or services that are the same or substantially similar to those provided by the Government, and then adjusting the supply made available and/or price of the good, resource, or service so that there will be neither a shortage nor a surplus (e.g., campsites in remote areas).

7. *Implementation.*

a. The general policy is that user charges will be instituted through the promulgation of regulations.

b. When there are statutory prohibitions or limitations on charges, legislation to permit charges to be established should be proposed. In general, legislation should seek to remove restraints on user charges and permit their establishment under the guidelines provided in this Circular. When passage of this general authority seems unlikely, more restrictive authority should be sought. The level of charges proposed should be based on the guidelines in section 6. When necessary, legislation should:

(1) Define in general terms the services for which charges will be assessed and the pricing mechanism that will be used;

(2) Specify fees will be collected in advance of, or simultaneously with, the provision of service unless appropriations and authority are provided in advance to allow reimbursable services;

(3) Specify where collections will be credited (see section 9). Legislative proposals should not normally specify precise charges. The user charge schedule should be set by regulation. This will allow administrative updating of fees to reflect changing costs and market values. Where it is not considered feasible to collect charges at a level specified in section 6, charges should be set as close to that level as is practical.

c. Excise taxes are another means of charging specific beneficiaries for the Government services they receive. New user charges should not be proposed in cases where an excise tax currently finances the Government services that benefit specific individuals. Agencies may consider proposing a new excise tax when it would be significantly cheaper to administer than fees, and the burden of the excise tax would rest almost entirely on the user population (e.g., gasoline tax to finance highway construction). Excise taxes cannot be imposed through administrative action but rather require legislation. Legislation should meet the same criteria as in section 7b; however, it is necessary to state explicitly the rate of

the tax. Agency review of these taxes must be performed periodically and new legislation should be proposed, as appropriate, to update the tax based on changes in cost. Any excise tax proposals must be approved by the Assistant Secretary for Tax Policy at the Department of the Treasury.

d. When developing options to institute user charges administratively, agencies should review all sources of statutory authority in addition to the Independent Offices Appropriations Act that may authorize implementation of such charges.

e. In proposing new charges or modifications to existing ones, managers of other programs that provide special benefits to the same or similar user populations should be consulted. Joint legislative proposals should be made, and joint collection efforts designed to ease the burden on the users should be used, whenever possible.

f. Every effort should be made to keep the costs of collection to a minimum. The principles embodied in Circular No. A–76 (Performance of Commercial Activities) should be considered in designing the collection effort.

g. Legislative proposals must be submitted to the Office of Management and Budget in accordance with the requirements of Circular No. A–19. To ensure the proper placement of user fee initiatives in the budget account structure, agencies are encouraged to discuss proposals with OMB at an early stage of development.

8. *Agency responsibility.* Agencies are responsible for the initiation and adoption of user charge schedules consistent with the policies in this Circular. Each agency will:

a. Identify the services and activities covered by this Circular;

b. Determine the extent of the special benefits provided;

c. Apply the principles specified in section 6 in determining full cost or market price, as appropriate;

d. Apply the guidance in section 7 either to institute charges through the promulgation of regulations or submit legislation as appropriate;

e. Review the user charges for agency programs biennially, to include: (1) Assurance that existing charges are adjusted to reflect unanticipated changes in costs or market values; and (2) a review of all other agency programs to determine whether fees should be assessed for Government services or the user of Government goods or services. Agencies should discuss the results of the biennial review of user fees and any resultant proposals in the Chief Financial Officers Annual Report required by the Chief Financial Officers Act of 1990;

f. Ensure that the requirements of OMB Circular No. A–123 (Internal Control Systems) and appropriate audit standards are applied to collection;

g. Maintain readily accessible records of:

(1) The services or activities covered by this Circular;

(2) The extent of special benefits provided;

(3) The exceptions to the general policy of this Circular;

(4) The information used to establish charges and the specific method(s) used to determine them; and

(5) The collections from each user charge imposed.

(6) Maintain adequate records of the information used to establish charges and provide them upon request to OMB for the evaluation of the schedules and provide data on user charges to OMB in accordance with the requirements in Circular No. A–11.

9. *Disposition of collections.* a. Unless a statute provides otherwise, user charge collections will be credited to the general fund of the Treasury as miscellaneous receipts, as required by 31 U.S.C. 3302.

b. Legislative proposals to permit the collections to be retained by the agency may be appropriate in certain circumstances. Proposals should meet the guidelines in section 7b.

Proposals that allow agency retention of collections may be appropriate when a fee is levied in order to finance a service that is intended to be provided on a substantially self-sustaining basis and thus is dependent upon adequate collections.

(1) Generally, the authority to use fees credited to an agency's appropriations should be subject to limits set in annual appropriations language. However, it may be appropriate to request exemption from annual appropriations control, if provision of the service is dependent on demand that is irregular or unpredictable (e.g., a fee to reimburse an agency for the cost of overtime pay of inspectors for services performed after regular duty hours).

(2) As a normal rule, legislative proposals that permit fees to be credited to accounts should also be consistent with the full-cost recovery guidelines contained in this Circular. Any fees in excess of full-cost recovery and any increase in fees to recover the portion of retirement costs which recoups all (funded or unfunded) accrual costs not covered by employee contributions should be credited to the general fund of the Treasury as miscellaneous receipts.

10. *New activities.* Whenever agencies prepare legislative proposals for new or expanded Federal activities that would provide special benefits, the policies and criteria set forth in this Circular will apply.

11. *Inquiries.* For information concerning this Circular, consult the Office of Management and Budget examiner responsible for the agency's budget estimates.

Leon E. Panetta,

Director, Office of Management and Budget.

[FR Doc. 93–16753 Filed 7–14–93; 8:45 am]

BILLING CODE 3110–01–P

PENSION BENEFIT GUARANTY CORPORATION

Use of Negotiated Rulemaking

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Request for comments.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") is considering developing a policy on the use of negotiated rulemaking. The Negotiated Rulemaking Act establishes a framework for the conduct of negotiated rulemaking, and it encourages Federal agencies to use negotiated rulemaking to enhance their informal rulemaking process. The PBGC is seeking comments at this time in order to involve the affected public at the outset of policy development.

DATES: Comments must be submitted on or before September 13, 1993.

ADDRESSES: Send comments to Ellan H. Spring, Dispute Resolution Specialist, Pension Benefit Guaranty Corporation, 2020 K Street NW., Code 35300, Washington, DC 20006–1860. Comments will be available for inspection at the PBGC's Communications and Public Affairs Department, suite 7100, at the above address between 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ellan H. Spring, Dispute Resolution Specialist, Pension Benefit Guaranty Corporation, at the address given above, or telephone 202–778–8817 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") is considering developing a policy on negotiated rulemaking, the framework for which is established in the Negotiated Rulemaking Act (5 U.S.C. 561–570). "Negotiated rulemaking" means rulemaking through the use of a negotiated rulemaking committee (5 U.S.C. 562(6)). In negotiated

rulemaking, a Federal agency establishes a committee to represent all the interests that will be significantly affected by a rule, including the Federal government. The negotiated rulemaking committee seeks to develop a consensus on a rule before it is formally proposed by the agency. An impartial person generally acts as facilitator for the committee.

Use of negotiated rulemaking is within an agency's discretion and participation in the negotiated rulemaking process is voluntary. The committee establishes its own rules of operation. Decisions are made by consensus, which generally requires the unanimous concurrence of the interests represented, including the agency. Negotiated rulemaking committees must be established and operated in accordance with the requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix), except as otherwise provided by the Negotiated Rulemaking Act. If a consensus is reached on a proposed rule, the committee provides the agency with a report that contains that proposed rule. If a consensus on a proposed rule is not reached, the committee may issue a report specifying any areas in which it reached a consensus and any other information, recommendations, or materials that the committee considers appropriate.

For negotiated rulemaking to be successful, there must be a limited number of identifiable interests that will be significantly affected by the rule, and representatives of those interests must be willing to negotiate in good faith to try to reach a consensus on the proposed rule. In addition, the issues involved must be such that there is a reasonable likelihood that a consensus can be reached in a fixed time period, and the agency must be willing to commit the resources necessary for the committee to operate. The initial resource demands may be substantially higher than in traditional rulemaking, as the agency must commit not only to additional expenditures such as facilitator costs, space and administrative support, and possible payment of expenses of committee members as provided for in the Negotiated Rulemaking Act, but also to making all agency personnel who are involved in the rulemaking available and fully committed to a compressed schedule for development of the proposed rule.

However, in enacting the Negotiated Rulemaking Act, the Congress found that negotiated rulemaking can have significant advantages over adversarial rulemaking and that it can increase the acceptability and improve the substance of the rules that are developed. Agencies that pioneered the use of negotiated rulemaking found the process extremely beneficial, particularly in developing rules that might otherwise have been challenged in court.

The PBGC's rules may have a major effect on persons and organizations affected by its regulations when certain events occur, such as the termination of a single-employer plan or the withdrawal of an employer from a multiemployer plan. However, these events generally occur infrequently with respect to a particular plan or plan sponsor, and plan practitioners, who may deal with PBGC on a frequent basis, may not contemplate their occurrence when a rule is proposed or issued. Most of the PBGC's rules have a limited impact on day-to-day operations of members of the regulated community. Thus, PBGC rules are rarely litigated.

Nevertheless, even if a rule is not likely to be litigated, negotiated rulemaking may improve communication between the PBGC and affected interests, providing the PBGC with better information and a mechanism to gain a better understanding of the practical consequences of available regulatory alternatives. In the longer run, this process can result in better, more acceptable regulations, reduced administrative burden, and improved relationships with those persons and organizations affected by PBGC regulations. For these reasons, the PBGC invites comments on whether the potential advantages of using negotiated rulemaking, in particular instances, would justify the public and private resources necessary for the negotiated rulemaking process to be viable.

The PBGC requests comments from interested persons on how it might use negotiated rulemaking. In particular, the PBGC requests comments on specific areas of PBGC regulation or criteria for identifying such areas in which the negotiated rulemaking process could be beneficial, considering the commitment of resources that would be required of both the PBGC and the interests affected by the rule.

Issued at Washington, DC this 7th day of July 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–16821 Filed 7–14–93; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

Rules and Forms Under Review by Office of Management and Budget

Agency Clearance Officer—John J. Lane (202) 275–5407

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Extension:

Rule 11Ab2–1 and Form SIP; File No. 270–23

Rule 15Bc3–1 and Form MSDW; File No. 270–93

Rule 17a–3; File No. 270–27

Revision:

Rule 17a–11; File No. 270–94

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 ("Commission") has submitted for OMB approval the following rules and forms:

Rule 11Ab2–1 (17 CFR 240.11Ab2–1) and Form SIP (17 CFR 249.1001) outline the requirements for filing an application to register with the Commission as an exclusive processor of securities information. One respondent incurs 440 annual burden hours complying with this rule.

Rule 15Bc3–1 (17 CFR 240.15Bc3–1) and Form MSDW (17 CFR 249.110) is used to provide notice of withdrawal of registration as a bank municipal securities dealer. A total of 20 respondents incur a cumulative total of ten annual burden hours to comply with the rule.

Rule 17a–13 [17 CFR 240.17a–13] was adopted in 1971 to ensure that brokers and dealers possess or control securities as indicated on their records, or know the location of those securities which they are to receive or deliver. The rule further provides that any short difference must be reported in the broker's or dealer's records. It is anticipated that approximately 5,000 brokers or dealers will spend a total of 500,000 hours complying with Rule 17a–13.

Rule 17a–11 [17 CFR 240.17a–11] provides the Commission and the self-regulators with an "early warning" mechanism to detect firms starting to experience financial or operational difficulties. The information furnished by such firms is then used to effect appropriate action to remedy the situation and prevent future problems. It is anticipated that approximately 650 brokers of dealers will spend a total of 650 hours complying with Rule 17a–11.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and 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, Clearance Officer, Office of Management and Budget, (Paperwork Reduction Act Numbers 3235–0043, 3235–0087, 3235–0035 and 3235–0085), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 6, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16812 Filed 7–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32602; File No. SR–AMEX–93–04]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Proposal to List for Trading Physical Delivery Quarterly Index Expiration Options on the Major Market Index

July 8, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 21, 1993, the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the AMEX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The AMEX has submitted a proposal to list for trading physical delivery index options on the Major Market Index ("XMI") that will expire on the first business day of the month following each calendar quarter and which will require settlement by delivery of 100 shares of stock of each of the component securities ("physical delivery quarterly index options"). The text of the proposed rule change is available at the Office of the Secretary, the AMEX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the AMEX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The AMEX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

When standardized index options began trading in 1983, they incorporated many of the same contract specifications of exchange-traded equity options, including expirations occurring on the Saturday following the third Friday of the expiration month. One significant difference, however, between these two kinds of options is that, upon exercise, index options settle in cash as opposed to delivery of underlying stock.

Over the years, while institutional investors have expanded their use of exchange-traded index options they also use the over-the-counter market where options can be customized with expirations at calendar-end valuations of their portfolios. Further, according to the Exchange, some of these investors prefer physical delivery options (*i.e.*, options that require upon exercise the delivery and/or receipt of stock) as opposed to cash settled options.

In order to meet the increasing needs of such institutional investors, the Exchange proposes to introduce standardized option contracts on the XMI. These contracts will trade until the last business day of the calendar quarter and feature exercise settlement that will require the delivery of 100 shares of each of the XMI's 20 component stocks. The AMEX believes that having the ability to offer physical delivery options on the XMI will give investors with portfolios that match the index components an opportunity to rebalance positions in a more efficient manner in order to remain fully invested in such securities.

The XMI is a price-weighted index[1] which has served as the basis of index options trading at the Exchange since 1983. The index has 20 component stocks and the index value is computed and disseminated every 15 seconds during each trading day. The Exchange will adopt a new trading symbol for physical delivery quarterly index options in order to clearly differentiate them from regular XMI index option contracts. Further, in view of the fact that the proposed contracts will require the physical delivery of 100 shares of each of the component stocks, and in order to avoid the distribution of cash in lieu of fractional shares, the index value underlying these options will be calculated solely by adding the prices of the component stocks without the application of any index divisor. Since the current index divisor used for "regular" XMI options is approximately 3, the index value for physical delivery XMI contracts will be about three times greater than the index value of regular XMI options. In accordance with usual index maintenance procedures, appropriate adjustments will be made, for example, to increase or decrease the number of shares for any component security in the index portfolio due to splits, special dividends, etc.

Contract terms for the proposed new options will feature European-style exercise.[2] The Exchange plans to initially list up to eight quarterly expirations, specifically, contracts where the last day of trading would be March 31, June 30, September 30, and December 31, (assuming all such dates are business days). Expiration would take place on the first business day following the end of the calendar quarter. Position limits for physical delivery quarterly index expiration options will be subject to the same position limits set forth in Rule 904C and would not be aggregated, for position limit purposes, with other option contracts on the XMI.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

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[1] The calculation of a price-weighted index involves taking the summation of the prices of the stocks in the index. In contrast, the calculation of a capitalization-weighted index involved taking the summation of the product of the price of each stock in the index and shares outstanding for each issue.

[2] A European-style option can be exercised only during a specified period before the option expires.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The AMEX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the AMEX. All submissions should refer to File No. SR–AMEX–93–04 and should be submitted by August 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

[3] 17 CFR 200.30–3(a)(12) (1993).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93–16732 Filed 7–14–93; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–32607; File No. SR–CBOE–93–23]

Self-Regulatory Organizations; Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to Fees Imposed for Delayed Submission of Trade Data

July 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 20, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The CBOE submitted one amendment to this proposal.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules relating to fees imposed by the Exchange for delayed submission of trade information. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] The purpose of Amendment No. 1 was to refile the proposed rule change pursuant to section 19(b)(2) of the Act instead of section 19(b)(3)(A) as originally proposed. See Letter from Michael L. Meyer, Schiff Hardin & Waite, to Richard L. Zack, Branch Chief, Division of Market Regulation, Commission, dated May 25, 1993.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify and amplify several administrative provisions concerning one of the exceptions contained in Exchange Rule 2.30, which imposes fees upon members for delayed submission of trade data ("Trade Match Rule" or "Rule"). The Trade Match Rule provides that no fee shall be imposed against a clearing member or market-maker where the clearing member was prevented from submitting trade data in a timely manner due to extenuating circumstances beyond the clearing member's control. The Rule enumerates examples of non-extenuating circumstances, which heretofore has included the breakdown of a clearing member's computer.

The Exchange has now concluded that it may be appropriate under certain circumstances to waive the fees where a delayed submission is caused by the breakdown of a clearing member's computer system, provided that the clearing member was not responsible for the breakdown. Accordingly, the Exchange proposes to amend the Rule to delete such system malfunctions from the examples of non-extenuating circumstances and to include them among the examples of extenuating circumstances that may result in a fee waiver.

In addition, the proposed rule change establishes a process by which members may challenge a fee, based on a claim of extenuating circumstances. The Clearing Procedures Committee will review all fee challenges involving fees in the amount of $500 or more. Fee challenges involving fees totaling less than $500 will be reviewed by Exchange staff in the Market Operations Department of the Exchange's Trading Operations Division. The determinations of the Clearing Procedures Committee and the staff of the Exchange are appealable under Part A of Chapter XIX of the CBOE Rules. The proposed amendment further clarifies that no appeal of a fee imposed under the Rule may be made unless the member has first either requested verification of the fee or challenged the fee.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) of the Act in particular by providing for the equitable allocation of reasonable fees among members of the Exchange and fostering cooperation and coordination

with persons engaging in clearing, and processing information with respect to, transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–23 and should be submitted by August 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16813 Filed 7–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32605; File No. SR–NASD–93–32]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Part II, Section 3(a) of Schedule D to the NASD By-Laws

July 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 2, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

SCHEDULE D TO THE NASD BY-LAWS

PART II

* * * * *

Sec. 3.

Suspension or Termination of Inclusion of a Security and Exceptions to Inclusion Criteria

(a) The Association may, in accordance with Article IX of the NASD's Code of Procedure, *deny inclusion or* apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of an otherwise qualified security if:

(1) An issuer files for protection under any provision of the federal bankruptcy laws;

(2) An issuer's independent accountants issue a disclaimer opinion on financial statements required to be certified; [or]

(3) Any officer, director, controlling shareholder, or other person in a position to influence management decisions has been:

(i) Barred or suspended from participating in the securities industry by the SEC or any self-regulatory organization;

(ii) Permanently enjoined by order, judgment, or decree of any court of competent jurisdiction from participating in the securities industry, or from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security; or

(iii) Convicted of any felony involving the purchase or sale of any security arising out of such person's participation in the securities or commodities industry; or

[(3)] *(4)* The Association deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Clarification of NASD Authority to Deny Inclusion of Particular Issuers in the Nasdaq System

Part II, Section 3(a) of Schedule D to the NASD By-Laws ("Schedule D") provides the NASD, under certain circumstances, with authority to apply additional or more stringent criteria for the initial or continued inclusion of particular securities or to suspend or terminate the inclusion of a security otherwise qualified for inclusion in the Nasdaq System.[2] The NASD has for

[2] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Nasdaq System includes both the Nasdaq SmallCap Market and the Nasdaq National Market System ("Nasdaq NMS"). The requirements that would qualify a security for inclusion in the Nasdaq SmallCap Market are contained in Part II of Schedule D. For the Nasdaq NMS, the qualification requirements are contained in both Parts II and III of Schedule D.

many years interpreted Part II, Section 3(a) as providing the Association with the authority to "deny inclusion" of a security in the Nasdaq System. Authority to deny inclusion is inherent in Section 3(a), otherwise the NASD would be required to include a security in the Nasdaq System in order to terminate the security's inclusion, which procedure was never the intent of the Association.

The NASD has determined that its authority to deny inclusion of particular securities in the Nasdaq System should be expressly stated in Part II, Section 3(a). The rule change would, therefore, amend Part II, Section 3(a) to Schedule D to provide that the NASD has authority to "deny inclusion" in the Nasdaq System of particular securities if an issuer files for protection under any provision of the federal bankruptcy law;[3] an issuer's independent accounts issue a disclaimer opinion on financial statements required to be certified;[4] or the Association deems that denial of inclusion is necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.[5]

Clarification of NASD Authority to Deny Inclusion in the Nasdaq System of Securities of Issuers That Are Managed, Controlled or Influenced by Persons With Histories of Securities or Commodities Violations

In recent years, the NASD has received an increasing number of applications for inclusion in the Nasdaq System by companies in which an officer, director, controlling shareholder, or other person in a position to influence management decisions has previously been the subject of a significant sanction for violations of state or federal securities laws, self-regulatory organizations ("SRO") rules and regulations, or the subject of a felony conviction in connection with the purchase or sale of a security or commodity contract. The NASD's case-by-case review of such issuer applications has resulted in denials of certain applications pursuant to the authority granted under Part II, Subsection 3(a)(3) of Schedule D[6] where the NASD formed a reasonable belief that enumerated persons connected with the issuer were predisposed to engage in further violative conduct contrary to interests of the investigating public. In such cases, the NASD's rationale has been that the history of prior violative conduct raises concerns regarding the continuing potential for conduct in connection with the operation of the company or the market for its securities that would be considered fraudulent and manipulative, contrary to just and equitable principles of trade, or otherwise raise investor protection concerns.

The NASD is concerned regarding the increase of applications for inclusion in the Nasdaq System by issuers that are managed, controlled or influenced by persons with a history of significant securities or commodities violations. The NASD believes such applications reflect a pattern of activity in the securities markets in which persons with a history of securities or commodities violations seek to continue their violative conduct in the securities markets through the management, control or influence of a publicly-held company. More recently, the NASD has considered that the same concerns arise if such persons obtain a position of management, control or influence of an issuer already included in the Nasdaq System.

The NASD's concern regarding situations where a person with a history of securities or commodities law violations manages, controls or influences a Nasdaq issuer is heightened by the fact that inclusion of the securities of such issuers in the Nasdaq System would exempt the transactions in these securities from SEC rules adopted to prevent certain fraud and abuses in the penny stock market. In August 1989, the SEC adopted Rule 15c2–6 to address sales practice abuses in low priced over-the-counter ("OTC") securities[7] which, in general, prohibits a broker-dealer from selling to or effecting the purchase of a "designated security" by any person, unless the broker-dealer has approved the purchaser's account for such transactions and received from the purchaser a written agreement to the transaction. On April 10, 1992, the SEC adopted the Penny Disclosure Stock Rules[8] in response to the Securities Enforcement Remedies and Penny Stock Reform Act of 1990[9] which Rules, in general, require that broker/dealers: (1) Furnish to a customer a risk disclosure document; (2) disclose the current bid and ask quotations and the commissions; and (3) provide monthly updates on the value of the securities. Among other exemptions, the SEC excluded from the scope of Rule 15c2–6 and the Penny Stock Disclosure Rules all issuers authorized or approved for authorization in the Nasdaq System. The NASD believes that continued vigilance is required to ensure that inclusion on the Nasdaq System is not used as a vehicle to avoid compliance with these Rules.

The NASD believes that, as stated In the Matter of Tassaway, Inc.,[10] prospective investors in the securities of a Nasdaq company are entitled to assume that securities in the Nasdaq System meet the System's standards. Among those standards is the requirement that, as set forth under Section 3(a)(3) to Part II of Schedule D, the NASD does not have a basis to exclude the securities in order to: prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; or protect investors and the public interest.

In light of the NASD's concerns, the NASD believes that Part II, Section 3(a) should be amended. The NASD proposes to add a new Subsection 3(a)(3) to Part II of Schedule D to provide the NASD authority, on a case-by-case basis, to either deny inclusion or apply additional or more stringent criteria for the initial or continued inclusion of a particular security, or to suspend or terminate the inclusion of an otherwise qualified security if any officer, director, controlling shareholder, or other person in a position to influence management decisions of the issuer has been: (i) Barred or suspended from participating in the securities industry by the SEC or any self-regulatory organization; (ii) permanently enjoined by order, judgment or decree of any court of competent jurisdiction from participating in the securities industry, or from engaging in or continuing any conduct or practice in connection with

[3] See, NASD Manual, Schedules to the By-Laws, Schedule D, Part II, Sec. 3(a)(1).

[4] See, NASD Manual, Schedule to the By-Laws, Schedule D, Part II, Sec. 3(a)(2).

[5] See, NASD Manual, Schedules to the By-Laws, Schedule D, Part II, Sec. 3(a)(3).

[6] The NASD notes that the SEC has affirmed that the NASD has broad discretion to deny an issuer's request that its securities be included in the Nasdaq System. In In the matter of Tassaway, Inc., Securities Exchange Act Release No. 11291 (March 13, 1975), 6 SEC Doc. 427, the SEC stated its review function of the NASD's action with respect to the Nasdaq System is very narrow and solely that of seeing whether the specific grounds on which such action is based exist in fact and are in accord with the applicable rules of the association. The SEC also stated that while exclusion from the Nasdaq System may hurt existing investors, the primary emphasis must be placed on the interest of prospective investors and that this latter group is entitled to assume that the securities in the Nasdaq System meet the system's standards.

[7] Securities Exchange Act Release No. 27160 (August 22, 1989), 54 FR 35468 (August 28, 1989).

[8] The Penny Stock Disclosure Rules consist of seven Rules: Rule 3a51–1 and Rules 15g–1 to 15g–6. See, Securities Exchange Act Release No. 30608 (April 20, 1992), 57 FR 18004 (April 28, 1992).

[9] Public Law 101–429, 104 Stat. 931 (1990).

[10] See, *supra* note 7.

the purchase or sale of any security; or (iii) convicted of any felony involving the purchase or sale of any security arising out of such person's participation in the securities or commodities industry.

The proposed rule change is a clarification of the NASD's current practice of utilizing its authority under Subsection 3(a)(3) to deny or to apply additional or more stringent criteria for the initial or continued inclusion of a security or to suspend or terminate the inclusion of an otherwise qualified security if the NASD deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest [11] in instances where persons with a history of significant securities-related violations are involved in the management, control or influence of a Nasdaq issuer or potential Nasdaq issuer. As amended, Subsection 3(a)(3) would be renumbered Subsection 3(a)(4).

The rule change would provide important guidance to the NASD review process, and would alert issuers seeking inclusion in the Nasdaq System, as well as current Nasdaq issuers, that the NASD will consider the issuer's connection with a person with a history of significant securities or commodities violations in determining whether to grant initial or continued inclusion to the security, and that the security may be subject to additional criteria as a condition for initial and continued inclusion in the Nasdaq System.[12]

[11] The proposed rule change to adopt new Subsection 3(a)(3) clarifies the NASD's current practice of utilizing its authority under the current Subsection 3(a)(3) and does not replace the language of this current provision that would be renumbered as Subsection 3(a)(4). The proposed rule change to adopt new Subsection 3(a)(3), therefore, would not preclude the NASD from relying on authority pursuant to Subsection 3(a)(4) in appropriate cases.

[12] In comparison, the American Stock Exchange ("Amex") states that the approval of an application for the listing of securities is a matter solely within its discretion. The reputation of company's management is a factor. See, Amex Company Guide, Section 101. Reputation of management also is a factor for continued trading. See, Amex Company Guide, Section 1001. The Amex will normally consider removing a security from the list if the company or its management engage in operations which, in the opinion of the Amex, are contrary to the public interest. See, Amex Company Guide, Section 1003(e)(iii).

In comparison, the New York Stock Exchange ("NYSE") provides a number of general factors which it takes into consideration prior to listing a security. See, NYSE Listed Company Manual, Section 102.01. In considering the delisting of a company, the NYSE states that it is not limited to the criteria it sets forth and, therefore, it may make a determination on an individual basis, considering all pertinent facts and even through a security meets or fails to meet enumerated criteria. See, NYSE Listed Company Manual, Section 802.00.

The authority granted to the NASD under Section 3(a) is discretionary in nature and the proposed rule change would allow the Association to continue to utilize its discretion in applying the standards of Section 3(a) on a case-by-case basis.

The NASD believes that the rule change is consistent with the provisions of Section 15A(b)(6) of the Act which requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest. The rule change clarifies that the NASD may deny inclusion of a security in the Nasdaq System pursuant to Part II, Section 3(a) of Schedule D to the NASD By-Laws. The rule change also clarifies the NASD's authority to deny inclusion or apply additional criteria for initial or continued inclusion of particular securities or suspend or terminate the inclusion of an otherwise qualified security if the issuer of such security is managed, controlled or influenced by persons with histories of significant securities or commodities violations. The rule change addresses the NASD's concern regarding the increase of applications by issuers for inclusion in the Nasdaq System where a person with a history of significant securities or commodities law violations is in a position to manage, control or influence the issuer, and the related NASD concern that inclusion of such securities in the Nasdaq System would exempt the transactions in these securities from SEC rules adopted to prevent certain fraudulent sales practices and abuses in the penny stock market. The proposed rule change is a clarification of the NASD's current practice of utilizing its authority under Section 3(a)(3) of Part II to Schedule D. The authority granted to the NASD under Section 3(a) is discretionary in nature and the proposed rule change would allow the Association to continue to utilize its discretion in applying the standards of Section 3(a) on a case-by-case basis. The proposed rule change would provide important guidance to the NASD review process, and would alert issuers seeking inclusion in the Nasdaq System, as well as current Nasdaq issuers, that the NASD will consider the issuer's connection with a person with a history of significant securities or commodities violations in determining whether to grant initial or continued inclusion of the security, and that the security may be subject to additional criteria as a condition for initial and continued inclusion in the Nasdaq System.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–93–32 and should be submitted by August 5, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16814 Filed 7–14–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32606; File No. SR–PHLX–93–17]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Activities of Clerks on the Trading Floor July 9, 1993

July 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 4, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PHLX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b–4 of the Act, proposes to adopt Floor Procedure Advice ("Advice") F–23, Clerks in the Crowd, to prohibit clerks from quoting markets and standing in trading crowds on the Exchange floor.[1] This advice would specifically exempt specialist clerks from these prohibitions as long as such clerks are supervised by a specialist and request quotations in order to update disseminated markets. The prohibition extends to any person without membership trading privileges.[2] The text of the proposed rule change is available at the Office of the Secretary, the PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PHLX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The PHLX proposes to adopt Advice F–23 to prohibit clerks from a sustained presence in the trading crowd in order to maintain order and preserve space in active trading crowds for floor traders. This Advice would also prevent clerks from improperly performing membership functions.

Currently, PHLX Rule 104 prohibits Exchange members from executing trades with non-members. In addition, Exchange by-laws state that membership in the Exchange confers upon the holder the privileges and obligations of active membership.[3] Based on these rules, the PHLX is proposing to adopt Advice F–23 to establish that the Exchange's minor rule violation plan includes these prohibitions against trading by non-members. Although Advice F–23 applies its prohibitions to non-member clerks, it also defines clerks to include members whose membership privileges have been suspended or terminated as well as other members without trading privileges.

The PHLX notes that Advice F–23 is applicable to only the equity options floor, and thus, the PHLX proposes to add the notion "O" after Advice F–23. In addition, the PHLX proposes to apply the new fines on a three-year cycle, such that repeat violations during the same three-year period would result in escalating fines.[4]

The PHLX believes that the proposed rule change is consistent with section 6 of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest, by maintaining order on the trading floor and penalizing impermissible activity by nonmembers, which should preserve the integrity of the marketplace.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–93–17 and should be submitted by August 5, 1993.

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[13] 17 CFR 200.30–3(a)(12) (1992).

[1] Proposed Advice F–23 is intended to be incorporated into the Exchange's minor rule violation enforcement and reporting plan, administered pursuant to PHLX Rule 970.

[2] See Letter from Edith Hallahan, Attorney, Market Surveillance, PHLX, to Bradley S. Ritter, Attorney, Division of Market Regulation, Commission, dated June 24, 1993.

[3] See PHLX By-Law Article XII, Section 12–1.

[4] Under the rolling three-year cycle, if there is no violation of Advice F–23 for three years, the next violation would be treated as a first occurrence. If there is a violation within three years after the most recent violation, the next highest fine will be issued. Thus, a third violation less than three years after a fine was issued for a second occurrence would be treated as a third occurrence, even though more than three years may have elapsed since the first occurrence.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–16815 Filed 7–14–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Incorporated

July 9, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Calton, Inc.
Common Stock, $.01 Par Value (File No. 7–10900)
Hemlo Gold Mines, Inc.
Common Stock, No Par Value (File No. 7–10901)
Reinsurance Group of America, Inc.
Common Stock, $.01 Par Value (File No. 7–10902)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 30, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–16816 Filed 7–14–93; 8:45 am]

BILLING CODE 8010–01–M

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[5] 17 CFR 200.30–3(a)(12) (1993).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

July 9, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Sociedad Anonima YPF
American Depositary Shares (rep. Class D Shrs. Par Value PS. 1) (File No. 7–10903)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 30, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–16817 Filed 7–14–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Midwest Stock Exchange, Inc.

July 9, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Southern California Water Company
Common Stock, $5.00 Par Value (File No. 7–10904)
Grupo Simec, S.A. DE C.V.
American Depositary Shares (each ADS represents 20 shares of Series B Common Stock) Par Value (File No. 7–10905)
LTV Corporation
Common Stock, $.50 Par Value (File No. 7–10906)
LTV Corporation
Series A Warrants (File No. 7–10907)
Carr Gottstein Foods Company
Common Stock, $.01 Par Value (File No. 7–10908)
Emerging Markets Income Fund II Inc.
Common Stock, $.001 Par Value (File No. 7–10909)
Ek Chor China Motorcycle Co. Ltd.
Common Stock, $.10 Par Value (File No. 7–10910)
Libbey, Inc.
Common Stock, $.01 Par Value (File No. 7–10911)
MMI Companies
Common Stock, $.10 Par Value (File No. 7–10912)
Milwaukee Land Company
Common Stock, $.30 Par Value (File No. 7–10913)
Sun Healthcare Group, Inc.
Common Stock, $.01 Par Value (File No. 7–10914)
Sithe Energies, Inc.
Common Stock, $.01 Par Value (File No. 7–10915)
YPF Sociedad Anonima
(Rep. Class D Shares) American Dep. Shares Par Value PS. 1 (File No. 7–10916)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 30, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–16818 Filed 7–14–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations, Applications for Unlisted Trading Privileges, Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

July 9, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Factory Stores of America, Inc.
Common Shares, $.01 Par Value (File No. 7–10917)
Southern California Water Company
Common Stock, $5.00 Par Value (File No. 7–10918
Fleet Financial Group, Inc.
2.345 Preferred Stock (File No. 7–10919)
Fleet Financial Group, Inc.
2.53 Preferred Stock (File No. 7–10920)
Kaiser Aluminum Corporation
$.65 Depositary Shares Mandatory Conversion Premium Dividend Preferred Stock, $.05 Par Value (File No. 7–10921)
Pulitzer Publishing Co.
Common Stock, $.01 Par Value (File No. 7–10922)
Anucho, Inc.
Common Stock, $.01 Par Value (File No. 7–10923)
MascoTech, Inc.
Common Stock, $1.00 Par Value (File No. 7–10924)
Hecla Mining Corporation
Preferred B (File No. 7–10925)
Capsure Holdings Corporation
Common Stock, $.05 Par Value (File No. 7–10926)
Corporation Bancaria De Espana S.A.
American Depositary Shares, Nominal Value 500 Spanish Pesetas (File No. 7–10927)
Thornburg Mortgage Asset Corporation
Common Stock, $.01 Par Value (File No. 7–10928)
Maderas Y Sinteticos Sociedad Anonima Masisa
American Depositary Shares (each representing 30 shares of Common Stock) (File No. 7–10929)
Emerging Markets Income Fund II, Inc.
Common Stock, $.001 Par Value (File No. 7–10930)
Chase Manhattan Corporation
Warrants Expiring June 30, 1996 (File No. 7–10931)
Yankee Energy System, Inc.
Common Stock, $5 Par Value (File No. 7–10932)
Freeport McMoran Cooper & Gold, Inc.
Depositary Shares Re. Step up Conv. Pfd Stock (File No. 7–10933)
MascoTech, Inc.
Conv. Pfd Stock Dividend Enhanced Conv. Stock, $1.00 Par Value (File No. 7–10934)
LTV Corporation
Warrants, Expiring 1988 (File No. 7–10935)
Capital Realty Investors Tax Exempt Fund Ltd. Partnership
Series I Common Stock (File No. 7–10936)
Capital Realty Investors Tax Exempt Fund Ltd. Partnership
Series II Common Stock (File No. 7–10937)
Capital Realty Investors Tax Exempt Fund Ltd. Partnership
Series III Common Stock (File No. 7–10938)
Banco Bilbao Vizcaya International Gibraltar Limited
American Depositary Shares, Series C Each Rep. One Non Cum Guaranteed Pfd Stock (File No. 7–10939)
Wheeling Pittsburgh Corporation
Series A Conv. Pfd Stock, $.10 Par Value (File No. 7–10940)
Ek Chor China Motorcycle Co. Ltd.
Common Stock, $.01 Par Value (File No. 7–10941)
Chile Fund, Inc.
Rights (File No. 7–10942)
Marine Harvest Investment, Inc.
Common Stock, $.01 Par Value (File No. 7–10943)
MGM Grand, Inc.
Common Stock, $.01 Par Value (File No. 7–10944)
Sun Healthcare Group, Inc.
Common Stock, $.01 Par Value (File No. 7–10945)
Carr Gottstein Foods Co.
Common Stock, $.01 Par Value (File No. 7–10946)
Grupo Radio Centro S.A. DE C.V.
American Depositary Shares, Each Representing Five Non Redeemable Ordinary Participation Certificates (File No. 7–10947)
YPF Sociedad Anonima
American Depositary Shares, $1 Par Value (File No. 7–10948)
Sithe Energies, Inc.
Common Stock, $.01 Par Value (File No. 7–10949)
MMI Companies, Inc.
Common Stock, $.01 Par Value (File No. 7–10950)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 30, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–16819 Filed 7–14–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2657]

Louisiana (and Contiguous Counties in Texas and Arkansas); Declaration of Disaster Loan Area

Caddo Parish and the contiguous parishes of Bossier, De Soto, and Red River in the State of Louisiana; Cass, Harrison, Marion, and Panola Counties in Texas, and Lafayette and Miller Counties in Arkansas constitute a disaster area as a result of damages caused by severe storms and flooding which occurred June 21 through June 27, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 30, 1993 and for economic injury until the close of business on April 1, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 265706 for Louisiana; 265806 for Texas; and 265906 for Arkansas. For economic injury the numbers are 792600 for Louisiana; 792700 for Texas; and 792800 for Arkansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 1, 1993.

Erskine B. Bowles,

Administrator

[FR Doc. 93–16794 Filed 7–14–93; 8:45 am]

BILLING CODE 8025–01–M

Interest Rate

AGENCY: Small Business Administration.

ACTION: Notice of interest rate.

SUMMARY: Pursuant to 13 CFR 108.503–8(b)(4), the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 108.503–4) shall be the greater of 6% over the New York prime rate or the limitation established by the constitution or laws of a given State. For a fixed rate loan, the initial rate shall be the legal rate for the term of the loan.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 93–16793 Filed 7–14–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 91–010]

Establishment of Area Committees for the Coastal Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The Coast Guard is announcing the establishment of Area Committees for the coastal zone of the United States. The Area Committees prepare Area Contingency Plans (ACPs) for the response to discharges of oil or hazardous substances into the waters of the United States in order to minimize the harm to the environment in the most cost-efficient manner.

EFFECTIVE DATE: July 15, 1993.

FOR FURTHER INFORMATION CONTACT: CDR R. G. Pond, Chief, Preparedness and Training Branch (G–MEP–4), (202) 267–6860, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal person involved in drafting this document is Ms. Pamela Pelcovits, Project Manager, Oil Pollution Act (OPA) 90 Staff.

Background

The Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) was enacted, in part, to improve the prevention of and response to discharges of oil and hazardous substances by vessels and facilities. In addition, OPA 90 creates a liability and compensation plan upon the occurrence of a discharge.

The Coast Guard published a notice of intent (56 FR 33481), on July 22, 1991, to notify the public of the intended boundaries for the coastal zone Area Committees. These boundaries were published in a notice on April 24, 1992 (57 FR 15201). Additional information on the boundaries is provided later in this notice.

On January 16, 1992, the Coast Guard published a notice in the Federal Register (57 FR 1933) entitled "Appointment of Area Committee Members and Designation of Area Committee Responsibilities." The notice described the responsibilities of Area Committees in the coastal zones of the United States and provide guidance for establishing and appointing members to the Area Committees. The Coast Guard received thirty-one letters commenting on the notice. A public hearing was not requested, and none was held.

Area Committees Under OPA 90

Section 4202(a) and OPA 90 amends section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321 *et seq.*) by requiring that the President designate Area Committees and appoint members from qualified personnel of Federal, State, and local agencies. Section 4202(a) also requires each Area Committee, under the direction of the Federal On-Scene Coordinator (OSC), to: (1) Prepare an ACP; (2) work with State and local officials to enhance contingency planning and assure preplanning of joint response efforts, including mechanical recovery, dispersal, shoreline cleanup, and the protection and rehabilitation of sensitive areas, fisheries, and wildlife; and (3) work with State and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

The authority to implement the Area Committee Program was delegated by the President to the Secretary of Transportation under Executive Order 12777 (56 FR 54757, October 22, 1991). The Secretary delegated the authority to the Commandant of the Coast Guard (57 FR 8581, March 11, 1992). The Commandant further delegated the authority to the Chief of the Office of the Marine Safety, Security and Environmental Protection by internal directive, dated March 19, 1992.

Coordinated preplanning is crucial to the successful resolution of crisis management situations. To ensure maximum participation and a unified response under the National Response System (NRS), OPA 90 requires that Area Committees conduct oil and hazardous substance spill response planning for each designated area.

The Area Committees replaced the Emergency Task Forces previously required under section 311(c)(2)(C) of the FWPCA and the Multi-Agency Local Response Teams (MALRTs) that existed in several major ports.

The Area Committees are designed to enhance the local response structure by providing a cohesive planning body consisting of Federal, State, and local government representatives. The purpose of the Area Committees is to ensure that all facets of the community are involved in a cooperative effort of planning for an oil or hazardous substance spill response.

Discussion of Comments

The Coast Guard received a total of thirty-one comments on the January 16, 1992, notice. Nine comments supported the proposal to allow the OSC to appoint members to the Area Committee. One comment stated that the Coast Guard District Commander, instead of the OSC, should appoint members based on the recommendation of the OSC. The comment added that such a review process would allow a party the opportunity to appeal an OSC's decision.

The Coast Guard has determined that it is more appropriate for OSCs to appoint members because of their familiarity with each Area. In the past, the Coast Guard OSCs have worked closely with agencies to appoint members to the Emergency Task Forces and MALRTs, and this process has worked well.

Twenty-one comments supported limiting the Area Committee size and restricting membership to those from Federal, State, and local agencies. However, ten comments stated that size and membership requirements would limit the expertise available to develop the ACP and, consequently, hinder successful response planning. Section 311(j)(4) of the FWPCA (33 U.S.C. 1321 (j)(4)), as amended by section 4202(a) of OPA 90, specifically limits the composition of Area Committees to qualified personnel of Federal, State and local agencies.

In the January 1992 Federal Register notice, the Coast Guard suggested the use of subcommittees, chaired by Area Committee members, to expand involvement beyond the appointed membership. This approach would broaden the expertise of the appointed membership and allow greater

participation in the planning process. Similar subcommittees have proven successful at the National Response Team level of the NRS. The Coast Guard encourages Area Committees to establish subcommittees composed of volunteers with expertise in response planning from government agencies, industry, academia, ecological associations, and the public.

Several of the comments suggested ways to utilize and expand the subcommittees, but none offered an alternative to the proposal. Five comments stated that subcommittees should be required. While the Coast Guard supports the use of subcommittees, the flexibility of those bodies would be frustrated by mandatory use. The Coast Guard does not require a specific type or number of subcommittees; instead, the needs of the particular Area Committee will drive the decision to form subcommittees.

Five comments objected to the appointment of Coast Guard members as both the chair and vice-chair of the Area Committee. The Coast Guard agrees with the comment that the vice-chair for the Area Committee should be appointed from the other members of the Area Committee. Specific policy concerning the selection of the Area Committee vice-chair is described later in this notice.

Five comments discussed the specific State and local agencies that the OSC should consider for potential membership. As described later in this notice, the OSCs have discretion in allowing multiple State or local agencies to be members of the Area Committee, according to guidelines also described below.

Six comments discussed the Coast Guard's proposal to restrict the Area Committees to planning functions. Since the planning duties of the Area Committees were specified in OPA 90, this notice is limited to describing the necessary action to implement those functions. Additional taskings, if appropriate, will be addressed in the future.

Some of the individual agencies represented on an Area Committee will be involved during a spill response. The notification and response strategy sections of the ACP will describe the responsibilities, duties, and strategies of these agencies during a response. During a spill, the OSC may convene a meeting of the Area Committee upon the OSC's discretion.

The Coast Guard agrees with the ten commenters who favored expanded methods to solicit input from the public and industry. The guidelines for OSC coordination with all entities participating in the Area Committee planning process have been expanded.

Area Committee Final Policy

I. Committee Members

The COTP, as the OSC, chairs the coastal zone Area Committee. The vice-chair should be a representative from an agency other than the Coast Guard with a major role in spill response for the area. If necessary, the OSC may establish multiple vice-chairs. The Scientific Support Coordinator, the National Strike Force, and the District Response Advisory Team are also available to assist the Area Committee as consultants upon request.

To implement section 311(j)(4) of FWPCA, as amended by section 4202 of OPA 90, the OSC appoints Area Committee members from appropriate Federal, State, and local agencies. Federal agency members of the Area Committee are selected from the fifteen agencies that make up the National Response Team (NRT), in consultation with the Regional Response Team (RRT). Not all NRT members need to be represented on each Area Committee.

Under the NCP, each State governor should designate for each designated Area in the State, a State agency as a single point of contact for pollution preparedness and response and as the primary State representative on the Area Committee. Other State agencies may be considered for membership by the OSC, particularly if they are nominated by the primary State agency. In addition, representatives of local agencies may be appointed, if the agencies are responsible for coordinating environmental issues and emergency responses in the coastal zone.

Whenever possible, agencies having similar or related interests should agree to be represented by a single Area Committee member. Agencies that represent predominantly local interests or only have a minimal interest in the coastal area should channel their concerns through a member of the Area Committee.

To obtain the maximum input from the Area Committee membership, members of the Area Committee should be capable of, and responsible for, making decisions regarding their agency's policies. However, the Area Committee is encouraged to seek advice from other sources.

Area Committees may establish subcommittees at the OSC's direction. These subcommittees may address issues such as: communication systems, sensitive environmental areas, response strategies (mechanical, chemical, or biological), recovered waste storage and disposal, exercise participation, navigation safety, and fish and wildlife rescue. Subcommittees will be chaired by an Area Committee member.

Area Committees do not constitute a formal Federal Advisory Committee, and each agency is responsible for funding its own participation in Area Committee proceedings.

II. Responsibilities

The Area Committee's main purpose is to plan for a coordinated response in the event of a discharge of oil or hazardous substance within the geographic boundaries of the designated Area. The OSC will direct and assist the Area Committee in the development of an ACP that meets the requirements established by the FWPCA, as amended by OPA 90.

The Area Committee should act as the focal point to solicit comments and advice on the concerns of the public and industry in the coastal area. The Coast Guard's position is that these sources should include a broad spectrum of interests, including: Facility owners and operators, shipping companies, cleanup contractors, emergency response officials, marine pilots associations, academia, environmental groups, specialists, consultants, response organizations, and concerned citizens. The Area Committee members then incorporate the information into the ACP to ensure that the ACP addresses all the relevant environmental, social, ecological, and economic concerns of the port area.

The Area Committee coordinates and cooperates with Federal, State, and local officials to enhance contingency planning with all appropriate non-member agencies and groups in the designated Area. The following are some of the factors that must be considered by the Area Committee when planning joint response actions: Appropriate procedures for mechanical recovery; use of dispersants, surface washing agents, surface collecting agents, bioremediation agents, or miscellaneous oil spill control agents listed on the NCP Product Schedule; shoreline impact evaluation and cleanup; protection of sensitive economic and environmental areas; and protection, rescue, and rehabilitation of fisheries and wildlife. The Area Committee must address all of these actions in advance to ensure there is no delay in responding to a spill.

The Area Committee does not replace the RRT or assume its responsibilities to make policy decisions regarding the use of dispersants, bioremediation, in-situ burning, or disposal. Generally, policy decisions are made by the RRT, and the

Area Committee must work with the OSC in implementing RRT policies that would have an impact on response preparedness and planning in the Area.

While the Area Committee has no formal role during an actual response, the OSC and some Area Committee members will have an active role through their positions with Federal, state, or local government agencies during the response. In most cases it is expected that the Area Committee will not meet during a spill, but the vice-chair or another member of the Area Committee will be designated as the Point-of-Contact for the Area Committee during a response. The Point-of-Contact will coordinate information flow, advice, and response input from those Area Committee members not specifically involved in the response effort to the OSC. This procedure allows the Area Committee members' concerns or advice to reach the OSC during a response, without overwhelming the OSC with information. The Area Committee may meet during a response at the discretion of the OSC. In developing the ACP, the Area Committee follows the format and guidelines provided by the Coast Guard in Commandant Notice 16471, dated September 30, 1992, or its successor documents.

The following is the list of coastal zone Area Committees that are established. The boundaries published in the **Federal Register** (57 FR 15201, April 24, 1992) have been adjusted, in some cases, based on the needs of various Area Committees. The geographic boundaries of each Area Committee will be maintained as part of the corresponding area and regional contingency plans. In addition, the boundaries for a particular Area Committee may be obtained from the Marine Safety Division of the appropriate district office as listed here.

First Coast Guard District

First District (m)—(617) 223–8447

Portland Area Committee
Boston Area Committee
Providence Area Committee
Long Island Sound Area Committee
New York Area Committee

Second Coast Guard District

Second District (m)—(314) 539–2655

There will be no separate Area Committees established by the Coast Guard in the Second Coast Guard District. The Environmental Protection Agency (EPA) is directing the establishment of committees, but the Coast Guard intends to actively participate in the inland Area Committees. The EPA will be promulgating its appointment of Area Committees in a separate notice.

Fifth Coast Guard District

Fifth District (m)—(804) 398–6637

Virginia Coastal Area Committee
Northeast North Carolina Coastal Area Committee
Southeastern North Carolina Coastal Area Committee
Maryland Coastal Area Committee
Phildelphia Coastal Area Committee

Seventh Coast Guard District

Seventh District (m)—(305) 536–5651

Savannah Area Committee
Charleston Area Committee
Jacksonville Area Committee
Tampa Area Committee
South Florida Area Committee
Caribbean Area Committee

Eighth Coast Guard District

Eighth District (m)—(504) 589–6271

Florida Panhandle Area Committee
Mobile Area Committee
New Orleans Area Committee
Morgan City Area Committee
Port Arthur Area Committee
Houston/Galveston Area Committee
Corpus Christi Area Committee

Ninth Coast Guard District

Ninth District (m)—(216) 522–3994

Duluth-Superior Area Committee
Milwaukee Area Committee
Chicago Area Committee
Grand Haven Area Committee
Sault Ste. Marie Area Committee
Detroit Area Committee
Cleveland Area Committee
Western Lake Erie Area Committee
Buffalo Area Committee

Eleventh Coast Guard District

Eleventh District (m)—(310) 980–4300, ext. 358

North Coast Area Committee
San Francisco Bay Area Committee
Central Coast Area Committee
Santa Barbara/Ventura Area Committee
Los Angeles/Long Beach Harbor Area Committee
Orange County Area Committee
San Diego Area Committee

Thirteenth Coast Guard District

Thirteenth District (m)—(206) 553–1711

Puget Sound Area Committee
Portland Area Committee

Fourteenth Coast Guard District

Fourteenth District (m)—(808) 541–2114

Hawaii/American Samoa Area Committee
Guam Area Committee
Palau Area Committee
Commonwealth of the Northern Marianas Islands Area Committee

Seventeenth Coast Guard District

Seventeenth District (m)—(907) 463–2205

Western Alaska Area Committee
Prince William Sound Area Committee
Southeast Alaska Area Committee

Dated: July 9, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–16704 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

[CGD 92–046]

National Boating Safety Advisory Council; Applications for Appointment

AGENCY: Coast Guard, DOT.

ACTION: Request for applicants.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the National Boating Safety Advisory Council (NBSAC). The Council is a 21 member Federal advisory committee that advises the Coast Guard on matters related to recreational boating safety. Members for the Council are drawn equally from the following sectors of the boating community: State officials responsible for State boating safety programs; recreational boat and associated equipment manufacturers; and national recreational boating organizations and the general public. Members are appointed by the Secretary of Transportation. Applicants are considered for membership on the basis of their expertise, knowledge, and experience in boating safety. The terms of appointment are staggered so that seven vacancies occur each year.

Applications are being sought for membership vacancies that will occur as follows: Two (2) representatives of State officials responsible for State boating safety programs; two (2) representatives of recreational boat and associated equipment manufacturers; and three (3) representatives of national recreational boating organizations and from the general public. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The Council normally meets twice each year at a location selected by the Coast Guard. When attending meetings

of the Council, members are provided travel expenses and per diem.

DATES: Completed application forms should be received no later than September 14, 1993.

ADDRESSES: Requests for application forms, as well as the completed application forms, should be sent to Commandant (G–NAB), U.S. Coast Guard Headquarters, Washington, DC 20593–0001; telephone: (202) 267–1077.

FOR FURTHER INFORMATION CONTACT: Mr. A.J. Marmo, Executive Director, National Boating Safety Advisory Council (G–NAB), room 1202, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001; (202) 267–1077.

Dated: July 6, 1993.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–16765 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–14–M

[CG 07–93–058]

Johns Island, Charleston County, SC; Public Hearing

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given that the Commandant, United States Coast Guard, has authorized a public hearing to be held by the Commander, Seventh Coast Guard District, on Johns Island, Charleston County, South Carolina. The purpose of the hearing is to give the bridge owner, waterway users, and other interested parties the opportunity to present data, views and comments orally or in writing concerning what alterations are needed to the John Limehouse Bridge to provide the vertical and horizontal clearances necessary to provide reasonably free and unobstructed passage for waterborne traffic on this reach of the Atlantic Intracoastal Waterway (AIWW).

DATES: The hearing will be held on Thursday, August 5, 1993 commencing at 7 p.m.

ADDRESSES: The hearing will be held at St. Johns High School located at 1518 Main Road, Johns Island, Charleston County, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Pruitt, Bridge Management Specialist, Seventh Coast Guard District, 909 Se. First Avenue, Miami, Florida 33131–3050, (305) 536–4103.

SUPPLEMENTARY INFORMATION: Under section 22 of Public Law 102–241, of the Coast Guard Authorization Act of December 19, 1991, the United States Congress declared the John F. Limehouse Memorial Bridge to be an obstruction to navigation.

The hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statement describing the proposed bridge project, and announce the procedures to be followed at the hearing. Speakers are encouraged to provide written copies of their oral comments to the hearing officer at the time of the hearing. Those wishing to make written comments only may submit those comments at the hearing, or mail them to the Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, 909 Se 1st Avenue, Miami, Florida 33131–3050. Written comments will be received through September 6, 1993. Each comment about the clearances proposed for the Limehouse Bridge to meet the needs of waterway users on the AIWW should include the name and address of the person or organization submitting the comment and state the reasons for the suggested alterations. A transcript of the hearing, as well as written comments received outside of the hearing, will be available for public review at the office of the Seventh Coast Guard District approximately 30 days after the hearing. Transcripts of the hearing will be made available for purchase upon request to the court recording service at the conclusion of the hearing. All comments received, whether in writing or presented orally at the public hearing, will be fully considered before final agency action is taken.

(33 U.S.C. 513; 33 CFR 116.20)

Dated: June 23, 1993.

William P. Leahy,

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

[FR Doc. 93–16711 Filed 7–15–93; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement: Baldwin County, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Baldwin County, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, suite 200, Montgomery, Alabama 36117–2018, Telephone (205) 223–7370. Mr. G. M. Roberts, State of Alabama Highway Department, 1409 Coliseum Boulevard, Montgomery, Alabama 36130, Telephone (205) 242–6311.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Alabama Highway Department, will prepare an Environmental Impact Statement (EIS) for Alabama Project MAOA–0200(6). The proposal is to construct a multi-lane, limited access facility from Alabama State Route 182 near Orange Beach north to Baldwin County Road 95, including a bridge across Wolf Bay. Project length is approximately 7.5 miles. The new highway will function as a hurricane evacuation route for Orange Beach and surrounding communities.

Alternatives under consideration include: (1) Alternate route locations, (2) a no action alternative, and (3) postponing the action alternative.

Early coordination has been initiated with Federal, State, and local environmental agencies and officials. Public involvement meetings were held on November 16 and 17, 1992, at Orange Beach and Elsanor, respectively.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistant Program Number 20.205, Highway Research Planning and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally-assisted programs and projects apply to this program.)

Issued on: July 5, 1993.

Joe D. Wilkerson,

Division Administrator, Montgomery, Alabama.

[FR Doc. 93–16787 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Baldwin County, AL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Baldwin County, Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway

Administration, 500 Eastern Boulevard, suite 200, Montgomery, Alabama 36117–2018, Telephone (205) 223–7370, or Mr. G.M. Roberts, State of Alabama Highway Department, 1409 Coliseum Boulevard, Montgomery, Alabama 36130, Telephone (205) 242–6311.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Alabama Highway Department, will prepare an Environmental Impact Statement (EIS) for Alabama Project STPAA–0216(104). The proposal is to upgrade Alabama State Route 225 from a two-lane to a multi-lane facility from U.S. 31 to Interstate 65. Project length is approximately 20 miles.

Alternatives under consideration include: (1) Upgrading the existing facility, (2) alternate route locations, (3) a no action alternative, and (4) postponing the action alternative.

A Scoping Meeting for the project was held in the Bay Minette City Auditorium, 123 Courthouse Square, Bay Minette, Alabama at 2 p.m., Central Standard Time on October 20, 1992.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued on: July 5, 1993.

Joe D. Wilkerson,

Division Administrator, Montgomery, Alabama.

[FR Doc. 93–16788 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Discretionary Cooperative Agreement to Support a Highway Traffic Safety Project; Traffic Safety for Young Adults at Job Training Sites

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Announcement of a discretionary cooperative agreement to support a national traffic safety project.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the availability of a FY 1993 discretionary cooperative agreement to support the agency's goal of reaching at least 75 percent safety belt usage by 1996. To help meet this goal, the agency plans to sponsor orientation sessions in four or five States, for officials of job training programs, on the benefits to students of traffic safety activities. Officials will be provided with information to help increase their understanding of the cost of motor vehicle crashes, in lives, injuries, and property damage. The officials administer programs that serve young adults, workers receiving economic dislocation assistance, Native Americans, migrant and seasonal farmworkers, veterans, Job Corps students, students in special demonstration projects for rural and urban young adults, and others.

DATES: Applications must be received at the office designated below on or before August 16, 1993.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), Attention: Belinda Leatley, 400 7th Street SW, room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–93–Y–05386. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Belinda Leatley, Office of Contracts and Procurement, at (202) 366–9566. Programmatic questions should be directed to Ms. Susan Gorcowski, Chief, National Organizations Division (NTS–11), NHTSA, room 5118, 400 7th Street, SW, Washington, DC 20590, (202)–366–2712.

SUPPLEMENTARY INFORMATION:

Background

The National Highway Traffic Safety Administration (NHTSA) designs strategies to reduce motor vehicle-related fatalities and injuries. One approach includes the development of awareness and educational materials for public and private sector organizations on the benefits of using occupant restraints and child safety seats in motor vehicles. NHTSA also promotes the passage and enforcement of laws requiring the use of these devices.

Occupant protection systems have proven to be effective at reducing fatalities and serious injuries. In 1990, a survey in 19 U.S. cities indicated a 49 percent belt use rate and an 84 percent child safety seat use rate. During 1990, safety belts saved about 4,800 lives and child restraints saved 222 lives. Had the use of safety belts and child restraints been universal during 1990, an additional 10,000 adult and 250 child lives could have been saved.

In early 1991, NHTSA initiated the National "70% by '92" Campaign, modeled after successful programs in Canada and limited demonstrations in the United States. One component, Operation Buckle Down (OBD), encouraged top level law enforcement personnel to integrate high levels of occupant protection enforcement into their regular operations. In another component, State and local police promoted public awareness of safety belt and child passenger safety laws for the several weeks surrounding summer holidays. These holiday enforcement activities included press conferences and news events which underscored the importance of using occupant protection systems. In less than two years, seat belt use rates increased to an all time high of 62 percent, the greatest single increase since the majority of seat belt use laws were passed.

A significant portion of the public does not perceive the failure to use seat belts to be as critical as other "high priority" societal problems, such as rising health costs, economic decline, and crime. Similarly, many public officials may not recognize the civic benefits of belt use in reducing medical and rehabilitation costs. Successful traffic safety programs have shown that without the support of State/local leaders, it is difficult to get relevant policies and programs enacted, implemented or enforced. As successful as the "70% by 92" campaign was, only 2,000 police jurisdictions—out of approximately 20,000—participated. This number could be dramatically increased if State/local officials understood the cost implications of traffic crashes on their budgets. The estimated $137 billion that traffic crashes cost society annually translates into significant expenditures by State/local governments for: liability claims and coverage; social and emergency medical services; health care programs; and welfare and income support. Increasing the national belt use rate to at least 75 percent by 1996 would reduce national fatalities by 1,850 each year. An additional annual reduction of 1,850 fatalities could be achieved by reducing alcohol involvement in crashes from 46 to 43 percent.

Objectives

To promote the benefits of traffic safety programs and the consequences of driving while under the influence of

alcohol or drugs by including traffic safety subjects in job training courses. Anticipated outcomes for students in job training programs are: (1) An increase in the awareness of the importance of traffic safety programs on- and off-the-job; (2) an increase in the use of safety belts, child safety seats and other occupant protection devices; and (3) a reduction in the incidence of driving while under the influence of alcohol or drugs.

Traffic Safety for Young Adults at Five Job Training Sites

NHTSA has developed a curriculum package for job training programs titled *Play It Safe: Traffic Safety for Job Training Programs.* This document was designed to serve populations enrolled in job training projects for young adults, workers receiving economic dislocation assistance, Native Americans, migrant and seasonal farmworkers, veterans, Job Corps students, students in special demonstration projects for rural and urban young adults, and others. The curriculum is directed at those 15 to 24 years of age enrolled in job training projects, an age group over-represented in highway fatalities and injuries. The curriculum is also designed to introduce traffic safety concepts to students, although the program's primary goals may be improvements in reading, writing, math and vocational skills. The recipient of this award will work with officials of job training projects in five States to promote the inclusion of traffic safety in job training courses.

Play It Safe includes an instructor/administrator section and five modules: Buckle Up, Drive Sober/Drive Safe, Drive Within the Speed Limit, Use Child Safety Seats, and Develop Safe Habits. Since the modules cover various subjects on traffic safety, the reading and math components introduce students to topics that will make them aware of motor vehicle safety in the workplace.

Specific Tasks

The recipient shall, at a minimum, perform the following tasks:

1. Develop a program to conduct the orientations in five States identified as having an interest in performing the work of this cooperative agreement award. The orientations shall include a presentation of the curriculum *Play It Safe: Traffic Safety for Job Training Programs,* a NHTSA document. The program shall include a plan to: (i) allow orientation participants to critique the curriculum *Play It Safe;* (ii) assess the results of the orientations; and (iii) assess how the materials were used by job training projects in five States.

2. Produce awareness and educational materials for the orientations on the benefits of using safety belts, not driving while under the influence of alcohol or drugs, etc. These items can include videos, handouts, worksheets, overheads, and other materials. Attendees at the orientations can include, but are not limited to, staff of the Department of Labor's job training program, officials of State departments of education, officials of the Service Delivery Areas of respective States, and supervisory and/or teachers of local job training programs.

3. Through agreements established with five organizational State/local chapters/affiliates (in five different States), arrange for the conduct of the orientations. As a facet of this task, the recipient shall obtain statements from each chapter/affiliate that include (i) a project plan to track and assess orientations in each State; (ii) a budget plan estimating costs for labor, materials, etc., including proposed cost-sharing; (iii) a staffing plan, including résumés; and (iv) documentation that the project plan has been coordinated with the Governor's Highway Safety Office.

4. Schedule and conduct meetings in five State/local chapter/affiliate locations selected to conduct the orientations and prepare a special report on these meetings. Revise materials on the results of these meetings.

5. Attend a national conference to enhance the recipient's awareness of current traffic safety technology and programs.

6. Support a project exhibit at the Lifesavers conference. This three-day conference is usually held in the Spring. It is sponsored by highway safety associations, the National Transportation Safety Board, and NHTSA, and attracts about 1,300 highway safety professionals each year. The time and location of the next conference has not been selected.

7. Prepare and submit quarterly and final performance reports in a format to be determined after award. The final performance report shall at a minimum include a description of the project, an evaluation of the results/conclusions, and recommendations.

Milestones/Deliverables

A final list of milestones/required deliverables will be developed to coincide with the accepted application prior to award. For planning purposes, NHTSA anticipates that the milestones/required deliverables will include the following:

Deliverables	Date
1. Enter into agreements with affiliates in five States	2 months after award.
2. Develop educational and awareness materials	2 months after award.
3. Convene orientations meetings in five States	3–9 months after award.
4. Submit special report on the five orientation meetings	10 months after award.
5. Revise materials based on results of the orientations	11 months after award.
6. Submit periodic performance reports	Quarterly.
7. Submit final performance report	12 months after award.

NHTSA Involvement

NHTSA, Office of Occupant Protection (OOP), will be involved in all activities undertaken as part of this cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the cooperative agreement, and coordinate activities between the organization and OOP.

2. Work with the organization to identify chapter/affiliates located in five States with which agreements will be established to arrange for the conduct of orientation sessions on traffic safety program activities for job training programs.

3. Provide information and technical assistance from government sources, within available resources and as determined appropriate by the COTR.

4. Provide liaison with other government/private agencies as appropriate.

Period of Support

The period of support for this cooperative agreement is twelve (12) months, the anticipated funding level is $50,000, and the number of anticipated

awards is one (1) Federal funds should be viewed as seed money to assist organizations in the development of ongoing traffic safety initiatives. Monies allocated to this cooperative agreement are not intended to cover all of the costs that will be incurred in completing the project. Applicants should demonstrate a commitment of financial and in-kind resources to the support of this project.

Eligibility Requirements

In order to be eligible to participate in this cooperative agreement, an organization must meet the following requirements:

1. Be a national non-profit organization;

2. Have an established membership structure with State/local chapters or affiliates; and

3. Have a membership consisting exclusively, or in large part, of local elected or appointed officials.

Application Procedures

Each applicant must submit one original and two copies of their application package to: NHTSA, Office of Contracts and Procurement (NAD–30), Attn: Belinda Leatley, 400 7th Street SW, room 5301, Washington, DC 20590. Submission of four additional copies will expedite processing, but is not required. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–93–Y–05386. Only complete applications, received on or before Thursday, August 19, 1992, will be considered.

Application Contents

1. The application package must be submitted with OMB Standard Form 424 (revised 4–88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and the certified assurances included. While the Form 424–A deals with budget information, and Section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort. Anticipated funding support to be made available to State/local chapters/affiliates should be indicated. Separate breakdowns of NHTSA-funded costs and applicant-funded costs shall be provided.

2. Applications shall include a program narrative statement that addresses the following:

a. *Identifies:* (i) The organizational membership and purposes; (ii) the past and present organizational experience in similar or related projects involving traffic safety; (iii) the organizational communication mechanisms, such as national/State conventions, monthly/annual training or policy meetings; and (iv) the relationship of the national organization to State/local elected or appointed government policy/decision-making officials and the importance of that relationship to this project.

b. *States the principal objectives of the project, as well as anticipated results and benefits.* Supporting documentation from concerned interests other than the applicant can be used. Any relevant data should be included or footnoted.

c. *Approach:* (1) Outlines a plan of action pertaining to the scope and detail on how the proposed work will be accomplished. The plan will include, but not be limited to: (i) the rationale to be used to identify and select the five State/local chapters/affiliates to participate in this project; (ii) the methods to be used to assess and address the needs of State/local job training officials in the development of the education and awareness materials; and (iii) the strategy to be used to determine the means of conveying complex cost/data information to State/local job training officials which effectively promotes understanding and a proactive response. Includes the reasons for taking this approach as opposed to other approaches.

(2) Provides quantitative projections, if possible, of the accomplishments to be achieved or lists the planned schedule of activities in chronological order.

(3) Identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate results. Explains the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

(4) Lists each organization, corporation, consultant, or other individual who will work on the project, along with a short description of the nature of their effort or contribution, and relevant experience.

Evaluation Criteria and Review Process

Initially, all applications will be reviewed to confirm that the applicant is eligible to participate and that the application contains all of the information required by the Application Contents section of this notice.

Each complete application from those who are eligible will then be evaluated by an Evaluation Committee. The applications will be evaluated based upon the following factors which are listed in descending order of importance:

1. What the applicant proposes to accomplish and the potential of the proposed project to make a significant contribution to local and national efforts to achieve increased safety belt use, proper child safety seat use, awareness of automatic crash protection systems, driving while not under the influence of alcohol or drugs, and reductions in the costs of motor vehicle crashes.

2. The soundness and feasibility of the proposed approach and the extent to which the applicant's proposed project addresses the needs of State/local government officials.

3. How the organization will provide the administrative capability and staff expertise required to successfully complete the proposed project.

4. The proposed coordination with and use of other available organizational resources, including other sources of financial support.

5. The past and present organizational experience in the performance of similar projects and the effectiveness of organizational communications mechanisms.

Terms and Conditions of the Award

1. Prior to award, the recipient must comply with the certification requirements of 49 CFR part 20—Department of Transportation New Restrictions on Lobbying, if applicable, and 49 CFR part 29—Department of Transportation Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

2. During the effective period of the cooperative agreement awarded as a result of this notice, the agreement shall be subject to the general administrative requirements of OMB Circular A–110, the cost principles of OMB Circular A–122, and the requirements of 49 CFR part 20, if applicable, and 49 CFR part 29.

Issued on July 9, 1993.

Michael B. Brownlee,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 93–16820 Filed 7–14–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 9, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 8453–OL
Type of Review: New collection
Title: U.S. Individual Income Tax Declaration for On-Line Service Electronic Filing
Description: The form will be used to secure taxpayer signatures and declarations in conjunction with the Electronic Filing program. This form, together with the electronic transmission, comprise the taxpayer's return.
Respondents: Individuals or households
Estimated Number of Respondents: 10,000
Estimated Burden Hours Per Respondent: 15 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 2,500 hours

OMB Number: 1545–0351
Form Number: IRS Forms 3975 and 3975–A
Type of Review: Revision
Title: Tax Practitioner Annual Mailing List Application and Order Blank (3975) Electronic Filer Annual Mailing Application and Order Blank (3975–A)
Description: Form 3975 and Form 3975–A allow a tax practitioner and an electronic filer a systematic way to remain on the mailing file (TPMF) and to order copies of tax materials.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 400,000
Estimated Burden Hours Per Respondent: 3 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 2,500 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–16802 Filed 7–14–93; 8:45 am]
BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 9, 1993.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0172
Form Number: IRS Form 4562
Type of Review: Resubmission
Title: Depreciation and Amortization (Including Information on Listed Property)
Description: Taxpayers use Form 4562 to: (1) Claim a deduction for depreciation and/or amortization; (2) make a section 179 election to expense depreciable assets; and (3) answer questions regarding the use of automobiles and other listed property to substantiate the business use under section 274(d).
Respondents: Individuals or households, farms, businesses or other for-profit, non-profit institutions, small businesses or organizations
Estimated Number of Respondents/Recordkeepers: 6,500,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—35 hours, 17 minutes
Learning about the law or the form—3 hours, 35 minutes
Preparing and sending the form to the IRS—4 hours, 35 minutes
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 280,427,500 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–16803 Filed 7–14–93; 8:45 am]
BILLING CODE 4830–01–P

Fiscal Service

[Dept. Circ. 570, 1992—Rev., Supp. No. 25]

Surety Companies Acceptable on Federal Bonds Suspension of Authority; National Automobile and Casualty Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to National Automobile and Casualty Insurance Company, of Pasadena, California, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is hereby suspended, effective today. The suspension will remain in effect until further notice.

The Company was last listed as an acceptable surety on Federal bonds at 57 FR 29382, July 1, 1992. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570 to reflect the suspension.

With respect to any bonds currently in force with National Automobile and Casualty Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–6850.

Dated: June 30, 1993.

Charles F. Schwan III,
Director, Funds Management Division, Financial Management Service.
[FR Doc. 93–16755 Filed 7–14–93; 8:45 am]
BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Advisory Board for Cuba Broadcasting; Meeting

The Advisory Board for Cuba Broadcasting will conduct a meeting on July 15, 1993, in the third floor conference room of the Donohoe building located at 400 6th Street, SW., Washington, DC. Below is the intended agenda.

Agenda

Thursday, July 15, 1993

Part one—Closed to the Public

10:30 a.m.

1. Approval of the Minutes
2. Technical Matters

Part two—Open to Public

11:30 a.m.

3. BoB and the Broadcasting Reorganization
4. Update on Radio Martí
5. Update on TV Martí
6. OCB Office of Program Evaluation/ Focus Group Results
7. Public Testimony

Items one and two, which will be discussed from 10:30 a.m. to 11:30 a.m., will be closed to the public. Discussion of items one and two will include information the premature disclosure of which would be likely to frustrate the implementation of a proposed agency action (5 U.S.C. 522(c)(9)(B)).

Members of the public interested in attending the open portion of the meeting should contact Kelly Comeau, Executive Secretary to the Advisory Board, as access to the building is controlled. Ms. Comeau can be reached at (202) 401–7312.

Dated: July 12, 1993.

Joseph Duffey,

Director.

[FR Doc. 93–16877 Filed 7–14–93; 8:45 am]

BILLING CODE 8230–01–M

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on July 15 in room 600, 301 4th Street, SW., Washington DC from 9 a.m.–10 a.m. and from 11 a.m.–12 p.m.

The Commission will meet with Mr. Stanley Silverman, USIA Comptroller, to discuss the Agency's budget and with Mr. Kent Obee, Director, Office of Near East and South Asia Affairs, USIA to discuss public diplomacy efforts in the region.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Kalamets, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: July 12, 1993.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 93–16826 Filed 7–14–93; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of Systems Notice; Change Other Than Routine Use Statements

Notice is hereby given that the Department of Veterans Affairs is revising the paragraph pertaining to categories of individuals in the system, in the system of records entitled: Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) as set forth in **Federal Register** publication, "Privacy Act Issuances," 1991 Compilation, Volume II, pages 967–971 as amended at 57 FR 12374 (4–9–92), and 57 FR 44007 (9–23–92). As a result of Public Law 102–484, the Service Members Occupational Conversion and Training Act of 1992, claimants will begin job training programs and interested employers will be applying for approval of their programs under that Act. Category number 19 is being added to notify the public that records are maintained in this system on such individuals.

The Privacy Act of 1974, 5 U.S.C. 552a(e)(4), requires agencies to inform the public of any changes to their system of records. However, since this change does not alter the uses of the information in the system of records, public comment is not required. This change is effective July 1, 1993.

Approved July 6, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

Notice of System of Records

In the system identified as 58 VA 21/22, "Compensation, Pension, Education and Rehabilitation Records—VA," appearing at page 16354 of the **Federal Register** of April 22, 1991, the system notice is amended as follows:

58 VA 21/22

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records—VA.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals will be covered by this system.

1. Veterans who have applied for compensation for service-connected disability under 38 U.S.C. Chapter 11.
2. Veterans who have applied for nonservice-connected disability under 38 U.S.C. chapter 23.
3. Veterans entitled to burial benefits under 38 U.S.C. chapter 15.
4. Surviving spouses and children who have claimed pension based on service-connected death of a veteran under 38 U.S.C. chapter 15.
5. Surviving spouses and children who have claimed pension based on service-connected death of a veteran under 38 U.S.C. chapter 11.
6. Surviving spouses and children who have claimed dependency and indemnity compensation for service-connected death of a veteran under 38 U.S.C. chapter 13.
7. Parents who have applied for death compensation based on service-connected death of a veteran under 38 U.S.C. chapter 11.
8. Parents who have applied for dependency and indemnity compensation for service-connected death of a veteran under 38 U.S.C. chapter 13.
9. Veterans who have applied for VA educational benefits under 38 U.S.C. chapters 31, 32, and 34.
10. Spouses, surviving spouses and children of veterans who have applied for VA educational benefits under 38 U.S.C. chapter 35.
11. Service members who have applied for educational benefits under 38 U.S.C. chapters 34 and 35.
12. Service members who have contributed money from their military pay to the Post-Vietnam Era Veterans Education Account under 38 U.S.C. chapter 32.
13. Individuals who have applied for title 38 benefits but who do not meet the requirements under 38 U.S.C. to receive such benefits.
14. Veterans, service members, spouses, surviving spouses and dependent children who have applied for benefits under the Educational Assistance Test program under sections 901 and 903 of Public Law 96–342.
15. Veterans who apply for training and employers who apply for approval

of their programs under the provisions of the Emergency Veterans' Job Training Act of 1983, Public Law 98–77.

16. Veterans, service members and eligible reservists who apply for benefits under 38 U.S.C. chapter 30.

17. Eligible members of the Selected Reserve who apply for benefits under 10 U.S.C. chapter 106.

18. Any VA employee who generates or finalizes adjudicative actions using the TARGET computer processing.

19. Veterans who apply for training and employers who apply for approval of their programs under the provisions of the Service Members Occupational Conversion and Training Act of 1992, Public Law 102–484.

[FR Doc. 93–16760 Filed 7–14–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 134
Thursday, July 15, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 20, 1993 at 10:00 a.m..

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, July 22, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1993–07:
Robert D. Van Bocklin on behalf of Pacific Power & Light Company Employee PAC.
Advisory Opinion 1993–08
James H. London on behalf of Congressman John J. Duncan, Jr.
Advisory Opinion 1993–10:
Delia Castillo De Colorado.
Proposed Final Rule on Amendments to the Multicandidate Committee Rules, with Explanation and Justification, and Accompanying Forms.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93–16983 Filed 7–13–93 3:33 pm]

BILLING CODE 6715–01–M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, July 20, 1993.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED: FY 1995 Budget.

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of External Affairs, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–16935 Filed 7–13–93; 2:22 pm]

BILLING CODE 7503–01–M

Corrections

Federal Register
Vol. 58, No. 134
Thursday, July 15, 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 COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 921107-3149; I.D. 052693B]

Foreign Fishing; Groundfish of the Gulf of Alaska

Correction

In rule document 93-14544 beginning on page 33778 in the issue of Monday, June 21, 1993, make the following corrections:

1. On page 33779, in the 1st column, in the 25th line from the bottom, "in" should read "on".

2. On the same page, in the second column, in the first full paragraph, in the fifth line, "CFR 672.20(c0(1)(ii)(B);" should read "CFR 672.20(c)(1)(ii)(B);".

3. On the same page, in the same column, under the heading *3. Closures to Directed Fishing for POP*, in the sixth line, "March 1993," should read "March 31, 1993,".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 921231-2331; I.D. #102092B]

Pacific Halibut Fisheries; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Alaska Crab Fisheries

Correction

In notice document 93-14545 beginning on page 33798 in the issue of Monday, June 21, 1993, make the following correction:

On page 33798, in the second column, under FOR FURTHER INFORMATION CONTACT:, in the third line, "907-217-2809," should read "907-271-2809,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 148

[T.D. 93-45]

Changes to Customs List of Designated Public International Organizations

Correction

In rule document 93-15489 beginning on page 35862 in the issue of Friday, July 2, 1993, make the following correction:

§ 148.87 [Corrected]

On page 35864, in § 148.87(b), in the last column of the table, in the next to last entry, "Mar. 9, 1988." should read "Mar. 8, 1988."

BILLING CODE 1505-01-D

federal register

Thursday
July 15, 1993

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 417

Health Maintenance Organizations: Organizational Structure and Services; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OCC–019–P]

RIN 0938–AE25

Health Maintenance Organizations: Organizational Structure and Services

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the regulations governing requirements for health maintenance organizations that are Federally qualified (FQHMOs) to incorporate changes made by the Health Maintenance Organization Amendments of 1988 pertaining to the definition of an FQHMO, requirements for providing physician services as basic health services, and requirements for fiscal soundness and insolvency protection. We would modify the definition of an FQHMO to allow it to organize under various organizational structures. We also would allow an FQHMO to offer a self-referral option that would permit its enrollees to go out of the plan to receive physician services that are basic health services, and to charge copayments and deductibles for self-referred physician services. Finally, we would allow an FQHMO to guarantee its fiscal soundness and provide insolvency protection for its enrollees by using the resources of an organization by which it is owned or controlled.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 13, 1993.

ADDRESSES: Mail comments (an original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: OCC–019–P, P.O. Box 26688, Baltimore, Maryland 21207.

If you prefer, you may deliver your written comments (an original and 3 copies) to either of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OCC–019–P. Written comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–690–7890).

If you wish to submit comments on the information collection requirements contained in this proposed rule, you may submit comments to: Allison Herron, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Maureen Miller, (202) 619–0129.

SUPPLEMENTARY INFORMATION:

I. General Background

A health maintenance organization (HMO) is an entity that provides or arranges for the delivery of specified medical services to enrollees in exchange for a premium paid on a periodic basis. Most individuals and families are enrolled in HMOs based on their affiliation with public or private entities, such as employers. Premiums are established annually through contracts between HMOs and these entities. Individuals who become enrollees of the HMO through a particular entity are known as a "group" of enrollees.

There are three basic types of HMOs through which health care services are provided: (1) The staff model, whereby the HMO delivers services through staff physicians who are employed by the HMO and who practice collectively in one or more settings; (2) the group practice model, whereby the HMO contracts for the provision of health services with a multi-specialty medical group that is a partnership or corporation of licensed health professionals who primarily practice as a group, and have substantial responsibility for providing services to the HMO; and (3) the individual practice association (IPA) model, whereby the HMO contracts with either individual physicians or with a partnership, corporation or association of medical professionals who enter into contractual arrangements with individual practitioners to provide health services to HMO enrollees from their individual offices. Mixed-model HMOs combine the features of more than one model type.

While all HMOs must be licensed by the State in which they do business, they may also seek to obtain Federal qualification status. Federal qualification is a voluntary program authorized under title XIII of the Public Health Service Act (the HMO Act). Federal qualification for an HMO means that, in addition to meeting all State licensure requirements, the HMO also meets certain Federal requirements pertaining to benefits, payment, availability and accessibility of services, fiscal soundness, quality assurance, and the organization and operation of the HMO. From the standpoint of an HMO, the primary importance of Federal qualification relates to its ability to market its services. This is due, in part, to the fact that section 1310 of the HMO Act sets forth conditions under which employers that have more than 25 employees and that offer health benefit plans to their employees must offer an HMO in addition to other non-HMO options. To be eligible to take advantage of section 1310 of the HMO Act, the HMO must be Federally qualified and have an approved service area in which 25 or more of the employees reside. This provision, known as the "dual choice mandate" of the HMO Act, offers employees the opportunity to choose between traditional indemnity insurance plans and an HMO. Under the Health Maintenance Organization Amendments of 1988 (Pub. L. 100–517), enacted on October 24, 1988, the "dual choice mandate" will become voluntary in 1995.

An HMO may obtain Federal qualification status by complying with the requirements specified in the HMO Act. Among other things, section 1301(a) of the HMO Act defines the type of entity that is eligible to become Federally qualified; section 1301(b)(1) specifies charges that an HMO may impose on enrollees in addition to premiums; section 1301(b)(3)(A) contains requirements for the provision of physician services that are provided as basic health services; and section 1301(c)(1)(A) sets forth requirements regarding fiscal soundness of the HMO and insolvency protection for the HMO's enrollees. If the Secretary of HHS, through HCFA, determines that the HMO meets all the relevant requirements specified in the HMO Act relating to such elements as health benefits, fiscal soundness, marketing practices, and quality assurance mechanisms, the Secretary certifies that the entity is a Federally-qualified HMO. (As used in the statute and regulations, "health maintenance organization" or "HMO" is a term of art meaning a prepaid health care organization that is Federally-qualified under title XIII of the HMO Act. However, other

organizations are referred to colloquially as "HMOs," or meet State law definitions of the term. Therefore, in order to avoid confusion, for purposes of this preamble only, we will use the term "HMO" in the generic sense, and "FQHMO" to refer to Federally-qualified HMOs.)

Public Law 100–517 amended the previously cited sections of the HMO Act pertaining to the definition of an FQHMO, requirements for providing physician services as basic health services, and requirements for fiscal soundness and insolvency protection. These provisions of Public Law 100–517 modify long-standing, outdated requirements and give FQHMOs increased flexibility to organize, market and manage their services. As a result, HMOs that are Federally qualified may be more responsive to industry trends and competition. Each of these amendments and our resulting proposed changes to the regulations are addressed individually in the following discussions.

We realize that some FQHMOs have, or are in the process of, changing their organizational structure or implementing a self-referral option as a result of this new flexibility. If there are aspects of an FQHMO's changes that do not meet our requirements when final regulations are issued, we will work with these organizations over time to assist them in achieving compliance. Until policies are finalized, we suggest that FQHMOs consult with us on remaining in compliance with current regulations while implementing these provisions of the 1988 amendments.

II. Reorganization of the Regulations

On October 17, 1991, we published a final rule in the **Federal Register** (56 FR 51984) which amended 42 CFR part 417 of the HCFA rules. Specifically, this final rule—

- Removed certain subpart headings, undesignated centered headings, and all obsolete provisions;
- Redesignated several sections to make room for adding new rules in logical order; and
- Designated the remaining content under 15 new subpart headings.

The publication of the October 17 final rule constituted the first step in a HCFA project to simplify, clarify, and update the regulations on prepaid health care. In keeping with the overall goal of this project, this notice of proposed rulemaking (NPRM) proposes to redesignate and reorganize certain sections in part 417. Specifically, we propose to make the following major changes to § 417.107:

- Redesignate § 417.107 as § 417.120.
- Remove existing paragraph (f).
- Redesignate paragraphs (b) through (e) and (g) through (m) as paragraphs (f) through (p), respectively.
- Add a new paragraph (e) that addresses an FQHMO's use of a guarantor to meet fiscal soundness requirements.
- Reorganize and redesignate the material in paragraph (a) as paragraphs (a) through (d).

We also propose to add a new § 417.107 to include a new self referral option for FQHMOs.

The section and subpart references in this NPRM are based on the changes made by the October 17 final rule. In addition, some of the preamble discussion makes reference to the proposed regulatory redesignations outlined above.

III. FQHMO Organizational Structures

A. Program Description

Section 1301(a) of the HMO Act contains the requirements for the organizational structure of an FQHMO. Prior to the enactment of Public Law 100–517, an FQHMO was required to be organized as a separate "legal entity" that met specific requirements, including that it provided all its enrollees with a prescribed package of health benefits, known as basic health services. (Basic health services are defined in section 1302(1) of the HMO Act and 42 CFR 417.101 of our regulations.) If the HMO desired to offer other health benefit packages that did not meet the requirements for basic health services, it was required to establish a separate legal entity through which to offer the other packages. Likewise, the separate legal entity requirement precluded a corporation or other legal entity from offering an FQHMO in addition to its non-qualified business health plans or "products."

B. Legislative Changes

Section 2 of Public Law 100–517 amended section 1301(a) of the HMO Act by redefining an FQHMO as a "public or private entity that is organized under the laws of any State" instead of a "legal entity." In Congressional reports that accompanied the legislation, the House and Senate committees indicated that FQHMOs and insurance companies could compete more effectively if allowed to offer a range of health benefit packages or products. (See Rept. No. 304, 100th Cong., 2nd Sess. 5 (1988), and H.R. Rept. No. 417, 100th Cong., 1st Sess. 6 (1987).) The reports indicate that these entities should be able to offer such options without the burden of establishing a separate corporation for each health benefit package or product.

While the legislative history of the statutory amendments indicates that Congress intended to provide entities more flexibility to operate an FQHMO in conjunction with other health benefit products without being separately incorporated, the legislation made only a narrow change in the definition of an FQHMO. It left most of the specific requirements in title XIII of the HMO Act unchanged. This indicates that Congress also wanted to preserve all of the protections afforded by the statute to FQHMO enrollees. Therefore, while we are proposing to provide FQHMOs with the increased organizational flexibility we believe was intended by the statutory changes, we have also included provisions designed to assure that FQHMOs continue to comply with all title XIII requirements for Federal qualification.

C. Proposed Changes to the Regulations

The amendments made by Public Law 100–517 concerning the organizational structures of FQHMOs will affect several areas of our regulations. This is due, in part, to the fact that although FQHMOs will be allowed to organize under various organizational structures, our regulations must ensure that the FQHMOs continue to meet all Federal qualification requirements specified in section 1301 of the HMO Act and 42 CFR part 417, regardless of how the FQHMO is organized.

If an FQHMO is organized as a component of a legal entity, rather than as a separate legal entity, a number of legal and enforcement issues arise. These issues include: (1) Keeping the FQHMO distinct from the entity's other components; (2) determining the responsibilities of the legal entity and the FQHMO in meeting financial and other requirements for Federal qualification; and (3) assuring that the financial status of other components of a legal entity does not have an adverse impact on the enrollees of the FQHMO.

To conform our regulations to the amendments made by Public Law 100–517, while addressing the legal and enforcement issues raised by the amendments we propose to—

- Modify the definition of an FQHMO and make other technical changes in order to incorporate the additional organizational structures now permissible;
- Add requirements that would distinguish the FQHMO that is a component of a legal entity from other health benefit packages that the legal entity may offer;

• Add clarifications delineating the responsibilities of the legal entity and the FQHMO that is a component of a legal entity for meeting the financial requirements of the FQHMO component (for example, fiscal soundness, insolvency protection, and disclosure requirements); and

• Add provisions that will require the FQHMO to have authority to contract with providers and subscribers when the FQHMO is a component of a legal entity.

Definition of an FQHMO—We propose to revise 42 CFR 417.1 to redefine the term "HMO" to include the FQHMO that is a separate legal entity as traditionally permitted, the FQHMO that is a component of a legal entity, and the FQHMO that is a legal entity with organizational components that offer other health benefit packages. In addition, where appropriate, we propose to modify references to the FQHMO to include legal entities that have an FQHMO component. We are also proposing to delete the existing provision in § 417.101(e) that prohibits FQHMOs from offering non-Federally-qualified health benefits packages.

Unless otherwise specified, any reference in the proposed regulations to an "HMO or legal entity of which the HMO is a component" means that the HMO is responsible in the first instance for meeting the requirement. However, if, as a practical or legal matter, it is impossible for the HMO to do so when it is a component of a legal entity, then the legal entity will be held responsible. It is not otherwise discretionary with the HMO whether it or the legal entity will meet any given requirement.

Distinguishing the FQHMO Product—In part, the FQHMO can be distinguished from non-Federally-qualified HMOs by a particular set of operational characteristics, including a clearly defined delivery system that ensures care is available and accessible in a specific service area, separate marketing materials, community rated premiums, profit and loss statements, and plan-specific operational data. Because the statutory amendments allow an FQHMO to be a component of a legal entity, we are proposing to add additional requirements to § 417.107 (redesignated as proposed § 417.120), which deals with the organization and operation of an FQHMO. These requirements are needed to distinguish the FQHMO from non-Federally-qualified components of the legal entity that may offer health benefits. These proposed requirements allow us to recognize the new organizational structures for FQHMOs while assuring compliance with all other requirements for Federal qualification.

Specifically, we propose to—

• Add a new § 417.120(q), which requires that if the FQHMO offers or is part of a legal entity that offers other health benefit plans, the FQHMO must—

• Be a distinct component that is clearly differentiated from the other health benefit plans;

• Have processes and records in place that allow the entity to separately identify the enrollees of the FQHMO at all times; and

• Have a distinct name that differentiates it from other health benefit packages offered by the legal entity in the FQHMO service area.

We believe these additional requirements are necessary to maintain the integrity of the Federal qualification program, to ensure that FQHMOs are in compliance with statutory and regulatory requirements, and to enable Federal regulators to monitor and enforce program requirements. For example, we are proposing that the enrollment of the FQHMO must be separately identifiable because the statute requires the FQHMO to provide basic and supplemental health services to "its enrollees." Further, these enrollees are assured of certain protections that the entity might not extend to enrollees in other health benefit packages. If the legal entity does not separate the enrollees of its qualified and non-qualified health benefits components—by its own choice or as a result of State law—then the organizational structure is legally impermissible for Federal qualification.

The distinct name requirement is intended to differentiate the benefits offered by the FQHMO from other health benefit packages or products offered by the entity in the service area. The distinct name also will promote consumer and employer recognition of the FQHMO as a discrete component. It will help eliminate consumer and employer confusion between the benefits offered by the component that is Federally qualified and the other benefit packages offered by the legal entity. In addition, it will aid employers to determine which entities or components of entities will enable them to comply with section 1310 of the HMO Act, which requires certain employers to offer Federally-qualified HMOs under an employer-sponsored health benefits plan.

In seeking clarity for the consumer and the employer, we do not propose prohibiting the use of the name of the legal entity in the FQHMO's name, or use of the FQHMO's name in the name of the non-qualified component. In fact, use of the legal entity's name may help the consumer to differentiate among FQHMOs, and between FQHMOs and other health benefit packages being offered in the service area marketplace by various companies.

Meeting Financial Requirements—We believe the current regulations at § 417.107(a)(1)(i) through (iii) (redesignated as proposed § 417.120(a)(1) through (3)) generally are adequate for demonstrating the fiscal soundness of organizations that offer an FQHMO line of business and FQHMOs that diversify and offer non-qualified health benefits packages. These regulations currently require that each FQHMO have a fiscally sound operation as demonstrated by (1) total assets being greater than total unsubordinated liabilities; (2) sufficient cash flow and adequate liquidity to meet obligations as they become due; and (3) a net operating surplus.

Under this rule, we are not changing the nature of these fiscal soundness requirements, but rather we are specifying the entities that are responsible in situations where the FQHMO is not a separate legal entity. Where a legal entity operates an FQHMO as one component of its business, we propose to require that the legal entity, rather than the FQHMO, meet the financial requirements specified in proposed redesignated § 417.120(a)(1) through (3) for the FQHMO. An FQHMO that develops and operates non-qualified health benefit packages will be treated as a legal entity with an FQHMO component. By permitting the legal entity to meet the financial requirements for Federal qualification, while leaving responsibility for the programmatic requirements to the FQHMO component, the proposed rules are consistent with the statutory language and legislative history of Public Law 100–517.

We must look to the legal entity for meeting the fiscal soundness requirements in this situation because the financial viability of the FQHMO is sustained by the financial health of the legal entity. Overall, it is the assets, profits, and net operating surplus of the legal entity that ensures the FQHMO's ability to continue operation. Therefore, we are interested in the fiscal soundness of the legal entity. In general, we propose to require the same financial reporting as specified in current regulations, except that the information will be about the legal entity. The only additional reporting requirement we anticipate is a profit and loss statement for the FQHMO component. We would

request this information under the existing reporting authority in redesignated § 417.120(m), but on an annual basis rather than quarterly.

For FQHMOs that are organized as a legal entity and then develop non-qualified benefit packages, the new requirements will apply. That is, the legal entity that incudes both the FQHMO and its other business must meet the fiscal soundness requirements. We anticipate requiring an annual profit and loss statement of the FQHMO business in addition to the financial reports routinely submitted by the legal entity.

We propose to require that, if the legal entity that operates an FQHMO component has not earned a cumulative net operating surplus during the three most recent fiscal years, did not earn a net operating surplus during the most recent fiscal year, or does not have a positive net worth, it must submit a business plan satisfactory to HCFA. The plan must include a statement of projected revenues and expenses for the operations of the legal entity and must demonstrate the legal entity's ability to achieve net operating surpluses. Where an HMO component is applying for Federal qualification, we propose to require profit and loss statements on the applicant HMO in addition to the legal entity. We believe these requirements are necessary to assure the Secretary that the FQHMO is financially sound, even though the FQHMO may have been determined to have adequate cash flow. The financial performance of either the legal entity or the FQHMO component may be an indicator of emerging quality of care problems in the Federally-qualified health plan.

The FQHMO that is itself a legal entity, or the legal entity of which the FQHMO is a component, must comply not only with the fiscal soundness requirements but also with the following requirements of the HMO Act:

- Have adequate provision against the risk of insolvency; and
- Comply with financial disclosure requirements included in section 1318 of the HMO Act.

Where a legal entity operates an FQHMO component, the legal entity will be required to meet the current requirements in § 417.107(a)(3) (redesignated as proposed § 417.120(c)) concerning protection of enrollees. If the FQHMO is separately incorporated, as required in some States, there is no problem anticipated. That is because if a separately incorporated FQHMO became insolvent, only one set of enrollees has claims. However, we are concerned that, under the newly permissible organizational structures, the FQHMO may not be able to protect its enrollees in the event of insolvency if it is not separately incorporated. If the legal entity offers other health benefit packages, or operates unrelated businesses, there is no guarantee, under existing regulations, that the enrollees of the FQHMO will be given special protection or priority. For example, bankruptcy court does not distinguish among the financial obligations of unrelated businesses.

Because section 1301(c) of the HMO Act currently requires that special protections for enrollees of FQHMOs must be secured, we are proposing to revise proposed redesignated § 417.120(c) to impose a more stringent insolvency protection requirement when the FQHMO is a separate line of business and is not separately incorporated. Under the new requirement the legal entity will be required to establish a special reserve for FQHMO expenses not covered under other insolvency protection arrangements.

We have also clarified existing regulations to state that trust agreements requiring approval of State officials are acceptable arrangements for uncovered liabilities. Such trust agreements have been accepted by HCFA in the past and we believe that our regulations should clarify this position.

Additional Obligations of the FQHMO—The various organizational structures that will now be available to FQHMOs make it necessary to clarify certain obligations of the FQHMO, particularly when the FQHMO is a component of a legal entity. One such obligation concerns contracting responsibility for purposes of provider and subscriber contracts in the situation where a legal entity both operates an FQHMO component and offers other non-qualified health benefits as well. We have clarified, through a proposed revision to § 417.107(a)(2) (redesignated as proposed § 417.120(d)(3)), that if the FQHMO is not itself a legal entity, it must be managed by an executive who has the authority to bind the legal entity in contracts. The effect of this new requirement is that the obligation to fulfill the terms of the contract will be with the FQHMO, even though the legal entity is accountable if the FQHMO fails to perform.

Specifically, there must be at least one official of the FQHMO component who has the delegated authority to bind the legal entity with respect to the following existing requirements and actions:

- Assumption of full financial risk on a prospective basis;
- Arrangements for health care services that are necessary to meet the requirements of title XIII of the HMO Act as they pertain to the benefits package and the delivery system;
- Establishment of subscriber contracts; and
- Arrangements to protect enrollees in the event of insolvency.

D. Additional Proposed Changes to the Regulations

In addition to the above changes, we are also proposing the following conforming changes:

- We propose to modify § 417.107(c) (redesignated as proposed § 417.120(g)), full and fair disclosure, to assure that, where applicable, all interested parties, including current or prospective enrollees of the FQHMO, are aware that the FQHMO (1) offers non-qualified health benefits packages through a separate component, or (2) is a component of a legal entity and that other health benefit packages are offered by the legal entity. This is a mechanism for assuring that there is no confusion regarding which health benefit package is offered by the FQHMO.
- We propose to revise § 417.107(j) (redesignated as proposed § 417.120(m)), which contains the reporting and disclosure requirements for FQHMOs, to correct a long-standing typographical error and to conform the regulations to program operations practice. We propose to require that reports be submitted within 120 days of the end of the fiscal year, not 180 days, to be consistent with operational procedures currently used in the program.
- We propose to modify § 417.143 to reflect that a component of a legal entity may now apply for qualification.
- We propose to modify § 417.152 to reflect the new organizational structures permitted the FQHMO. We believe that an FQHMO that is a component of a legal entity should inform employers of the nature of the legal entity of which it is a component at the time that the dual choice mandate is submitted.

IV. Offering a Self-Referral Option and Charging Copayments and Deductibles for Self-Referred Services

A. Program Description

Section 1301(b) of the HMO Act requires an FQHMO to provide all basic health services to its enrollees for a single premium. (Our regulations at 42 CFR part 417 allow the FQHMO to provide or arrange for the provision of such services.) We interpret this provision to require that an FQHMO must provide all services through a network of contracted or "affiliated" physicians and providers, except as

otherwise provided in the statute or regulations.

Prior to 1988, section 1301(b)(3)(A) specified that all physician services that are basic health services had to be provided through one or a combination of acceptable FQHMO models: The staff model, the group model, individual practice associations (IPAs), or direct service contracts with individual physicians. Some exceptions, such as for emergency care, allow for the use of unaffiliated or non-plan physicians.

Additionally, FQHMOs must comply with certain restrictions in charging their enrollees any payments in addition to premiums. Section 1301(b)(1) of the HMO Act permits FQHMOs to charge nominal supplemental payments for specific basic health services, but under current regulations these payments have been limited to copayments only (including coinsurance). Deductibles were not permitted.

B. Legislative Changes

Section 3 of Public Law 100–517 changed the requirement that all physician services be provided by FQHMO physicians. The law now permits FQHMOs to offer a benefit option that makes the FQHMO financially responsible for a limited amount of non-emergency medical care obtained outside of the FQHMO's normal health delivery system. Specifically, the statute revised section 1301(b)(1) of the HMO Act to allow FQHMOs to permit enrollees to obtain basic physician health services from physicians who are not on the staff or under contract with the HMO. In the regulations, we refer to this as a "self-referral option."

The self-referral option is a relatively new benefit option offered by HMOs and other prepaid health care systems. The option allows enrollees of prepaid health plans to decide, at the point of needing a service, whether to see their plan physician or go outside of the plan's usual network of affiliated providers. Generally, an enrollee electing this option has to meet higher cost-sharing requirements for this privilege. HMOs usually design the benefit option in conjunction with specific needs of employer groups. That is, the HMO may design different self-referral options for different group contracts. The option sometimes is also referred to as a "point-of-service" or "out-of-plan" option.

The self-referral option grew out of dissatisfaction with the "lock-in" requirement, a fundamental principle for most HMOs, that guarantees payment for services only if enrollees use affiliated providers for covered services. Consumers frequently are hesitant to join an HMO or FQHMO because they do not want to relinquish their freedom to choose physicians. As a result, employers looking for alternative, cost-saving methods for providing health care find their employees unwilling to shift into HMOs, and many HMOs find the lock-in feature to be a barrier to increasing their enrollments.

Some forms of prepaid health care systems, such as Preferred Provider Organizations (PPOs), have been able to rapidly increase their share of employer contracts and new enrollees by offering extensive physician networks and self-referral options. The self-referral option has proven to be successful at increasing such health plans' market share, even though there are higher cost-sharing requirements associated with out-of-network services. The success of this option has led many non-Federally qualified HMOs to offer a self-referral option. However, because the self-referral option is an indemnity-type product and puts the definition of an HMO into question, many States do not allow HMOs to offer this benefit option. In States where HMOs are not permitted to offer the self-referral option, HMOs use "wrap-around" insurance policies for self-referrals, that is, the HMO contracts with an insurance company to provide payment for certain out-of-plan services. In recognition of these trends among entities with which HMOs compete, Public Law 100–517 permits FQHMOs to offer a self-referral option.

The addition of a self-referral option allows FQHMOs to enroll consumers who might be attracted to prepaid health plans except for limited provider choice. This option offers consumers the freedom, under some circumstances, to choose a physician from the fee-for-service sector instead of the FQHMO's panel of physician providers, and have the services covered under the plan.

Section 4 of Public Law 100–517 amended section 1301(b)(3)(A) of the HMO Act to permit the FQHMO to provide up to 10 percent of the physician services necessary for the provision of the basic health service benefits through unaffiliated physicians. The 10 percent limitation reflects Congressional concern that offering an indemnity-type product would alter the essential character of prepaid HMOs.

Public Law 100–517 also contained an amendment that modified the supplemental payments an FQHMO may charge enrollees. The amendments permit FQHMOs to charge reasonable deductibles for physician services obtained on a self-referral basis outside of the FQHMO's affiliated physician network. As stated earlier, Federal regulations have permitted FQHMOs to charge copayments (including coinsurance), but not deductibles, for basic health services. Under the amendments made by Public Law 100–517, FQHMOs may charge deductibles as well as copayments for the self-referred services.

The amendments made by Public Law 100–517 also set forth conforming changes to section 1310(b) of the HMO Act, which outlines requirements for employers to offer an FQHMO health plan(s) to employees, to permit FQHMOs offered by employers to include a self-referral option in their benefit packages.

C. Proposed Changes to the Regulations

To implement the statutory amendments made by section 3 of Public Law 100–517, we propose to add a self-referral option in new proposed § 417.107 to specify under what conditions and limitations an FQHMO may allow its enrollees to go out of the plan to receive physician services that are basic health services. The proposed regulations clarify that the services must be provided by a physician or other health professional (for example, nurse practitioner or physician assistant) that State law allows to provide the particular medical services. The proposed regulations also clarify that the FQHMO has the flexibility to design this option to support its own interests and the interests of its group contracts. This flexibility includes the types of services that may be obtained on self-referral as well as cost-sharing amounts. In addition, FQHMOs may establish policies and procedures to administer the option.

As mentioned earlier in this preamble, the statute added a restriction that limits the FQHMO's use of the self-referral option so that it may not be used for more than 10 percent of the FQHMO's physician services that are basic health services. We propose that compliance with the 10 percent limit be determined based on the ratio of total expenses for the self-referral option (physician services) to the FQHMO's total expenditures for basic physician services for a calendar year. For purposes of the 10 percent limit, total expenses for the self-referral option and for basic physician services include expenses paid, expenses incurred and reported but not yet paid, and estimates of incurred expenses not yet reported.

We are proposing that FQHMOs offering this option be required to report quarterly or at designated intervals. We considered requiring monthly reporting during the first year to assure that both

the FQHMO and HCFA could identify any problems with the 10 percent limit. However, we believe this frequency of reporting may be too burdensome. We seek public comments on this nonselected reporting option.

If these reports indicate that the FQHMO has exceeded the 10 percent limit on total physician expenses, we propose to require that the FQHMO initiate a corrective action plan. As part of the corrective action plan, the FQHMO must cease marketing the self-referral product. The corrective action could include redesigning the option (that is, services covered), reassessing the groups eligible for the option in the next contract year, and increasing copayments and deductibles. We may require some action immediately, and some over a longer interval, for example, at contract renewals.

If we are not satisfied with the FQHMO's response, we may revoke approval of the self-referral option. FQHMOs would be permitted to continue administering the option for affected subscriber contracts through the end of existing contract periods, but then must cease offering the self-referral option. We are proposing to require that marketing of the option be discontinued when approval is revoked. An FQHMO that fails to comply with these requirements to cease offering the option would be considered out of compliance with assurances given to the Secretary.

We also propose to permit FQHMOs to allow enrollees to use unaffiliated providers (those not under contract or other agreement with the HMO) for obtaining other, non-physician basic health services, including inpatient care, if it results from seeing an unaffiliated physician on a self-referral basis. However, this would only be allowed if the FQHMO precertifies the services. The FQHMO would review all requests for inpatient hospital and other non-physician basic health services from unaffiliated providers and would determine whether to cover (that is, accept fiscal responsibility for) these services. Under these conditions, we believe that these services may be considered "arranged for" under § 417.103(a).

We have not specified procedures for preauthorizing these basic health services, but instead propose to allow FQHMOs the flexibility to administer this extension of the self-referral option. Under this approach, we propose to permit thresholds for automatic approval of out-of-plan (non-emergency) basic health services. For example, an FQHMO may establish a policy to automatically approve out-of-plan services costing less than $1,000 if such services are ordered by a physician seen on a self-referral basis.

This added flexibility should allow FQHMOs to compete more effectively with PPOs and HMOs with "wrap-around" self-referral options. State regulators and industry representatives advised us that no market exists for self-referral options limited to physician services only. Therefore, we propose that FQHMOs be permitted to allow enrollees to obtain non-emergency inpatient and other basic (non-physician) health services from unaffiliated providers if the service is preauthorized by the FQHMO.

This opportunity to receive an entire episode of care outside of an FQHMO, however, adds to our existing concerns surrounding self-referral—lack of reliable predictors for utilization and expenses, limited influence over enrollee decisions, and potential impact on the financial stability of the FQHMO. To address these concerns, we propose to require prior approval by HCFA before an FQHMO can implement a self-referral option, and establish requirements at proposed § 417.107(c) that permit us to assess the FQHMO's ability to offer the self-referral option in order to determine whether to give prior approval for implementation.

In addition, the proposed regulations require FQHMOs to meet special financial requirements for net worth and insolvency protection which we believe reasonably balance our concerns, as noted above, with the need to permit FQHMOs to remain competitive in local markets. First, the proposed regulations set forth a requirement that FQHMOs offering this option must maintain a net worth equal to three months of expenses for the self-referral option. This requirement addresses our concern that offering this option should only strengthen the FQHMO, not compromise its fiscal soundness. We considered requiring a restricted reserve, but opted instead to set a minimal standard for the financial position that an FQHMO must have to bear the added risk of out-of-plan services.

This net worth requirement differs from the reserve requirement established by the National Association of Insurance Commissioners and the National Association of HMO Regulators in guidelines for HMO point-of-services products. We believe that net worth requirement proposed in the regulations is adequate for FQHMOs because of the limited risk associated with the self-referral option as authorized by Congress in the 1988 amendments. That is, the self-referral option is restricted to physician services (out-of-plan hospital and other basic health services must be preauthorized) and limited to 10 percent of the FQHMO's physician services that are basic health services. Further, the added risk should be balanced by the benefits of increased market share if appropriately implemented.

With regard to the plan for handling insolvency, we propose that the FQHMO have arrangements in place to cover four months of expenses for self-referred services. These arrangements will cover one month preceding and three months after the date of insolvency for claims filed under the self-referral option. This extended period of time is necessary because of the lag in receiving claims for out-of-plan services. While claims for self-referred services may be filed beyond this time, we believe this requirement to be reasonable for the FQHMO and its enrollees.

We also propose to add a new paragraph (a)(5) to § 417.104, Payment for basic health services, to incorporate the FQHMO's authority to charge deductibles for physician services obtained under the self-referral option. In addition, this new provision will allow FQHMOs to establish separate copayments and coinsurance amounts for non-emergency basic health services, including inpatient services, obtained from unaffiliated physicians and providers as a result of self-referral. These copayments and coinsurance amounts will not be subject to limitations established in § 417.104(a)(4), including the catastrophic limit that protects individual enrollees from paying more than 200 percent of their annual premium that would apply if they had chosen an option with no copayments.

We believe that such copayments, coinsurance amounts, and deductibles for out-of-network care will not serve as a barrier to obtaining services. All basic health service may still be obtained within the FQHMO's network, and the self-referral option is simply an additional way to obtain the same services. Further, in that copayments, coinsurance amounts, and deductibles serve as a major mechanism in controlling utilization of the self-referral option, the proposed regulations offer the FQHMO flexibility to establish these amounts. FQHMOs may choose to set these cost-sharing amounts at levels that differ substantially from amounts for in-network services as a method to control risk (e.g. the plan may impose a 25 percent coinsurance requirement for certain out-of-plan services).

It should be noted that the FQHMO must continue to meet the requirements

of the HMO Act as it pertains to the self-referral option. For example, FQHMOs are required to offer a process to hear and resolve grievances between the FQHMO and its enrollees (§ 417.107(g)). This process, by definition, includes claims payment disputes for services received under a self-referral option. Also, expenses for preauthorized, out-of-plan basic health services (that result from a physician self-referral) must be included in the FQHMO's plan for handling insolvency. As discussed earlier in this preamble, these basic health services are considered "arranged for" by the FQHMO and, therefore, must be treated like other services furnished or arranged for by the FQHMO.

We believe that the pre-approval process, net worth requirement, added insolvency protection, and monitoring activities set forth in this proposed regulation allow HCFA to meet its responsibilities in administering the requirements of title XIII of the Act while avoiding onerous government intervention. However, there may be other reasonable approaches to these requirements, such as an alternative to ensure that FQHMOs offering a self-referral option are fiscally sound and capable of assuming this new risk without hazarding insolvency. We invite public comments on the adequacy and appropriateness of our approach. We also invite commenters to share information on the risk borne by FQHMOs in offering a self-referral option.

D. Additional Proposed Changes to the Regulations

In addition to the above changes, we propose to make conforming changes to § 417.103 (Providers of basic and supplemental health services), proposed redesignated § 417.120 (Organization and operation), and § 417.152 (Requirements for a request for inclusion of the HMO option in a health benefits plan; employing entity response) to V. include a reference to the self-referral option.

V. FQHMO Fiscal Soundness

A. Program Description

Among other requirements to be Federally qualified, an HMO must have a fiscally sound operation and adequate provisions against the risk of insolvency.

Fiscally sound operation—Under this requirement, an FQHMO must demonstrate that it has total assets greater than total unsubordinated liabilities (Public Health Service section 1305 loan funds are excluded as a liability), sufficient cash flow and adequate liquidity to meet current obligations, and a net operating surplus or a financial plan. If the FQHMO cannot demonstrate a net operating surplus, it must submit to us a financial plan for achieving a net operating surplus within available fiscal resources. Adequate provision against the risk of insolvency—There are two requirements that FQHMOs must meet for insolvency protection. First, FQHMOs must have a plan or an arrangement that, in the event of insolvency, continues benefits for the duration of the contract period for which a premium was paid and, for those enrollees being treated on an inpatient basis on the date of insolvency, until discharge. Second, FQHMOs must have arrangements that protect enrollees from incurring liability for payment of any fees that are the legal obligation of the FQHMO. The FQHMO may use insolvency insurance, provider contracts, restricted financial reserves, guarantees and other arrangements acceptable to the Secretary to protect its enrollees.

It has been permissible, even prior to the enactment of Public Law 100–517, for an FQHMO to use a guarantee from a parent organization to meet insolvency protection requirements. This policy interpretation of 42 CFR 417.107(a)(3)(i)(D) (redesignated as proposed § 417.120(d)) was implemented by a Program Information Letter, 86–02, issued by the Public Health Services' Office of Health Maintenance Organizations. It was further clarified by HCFA's Office of Prepaid Health Care through a Program Information Letter, 88–01, published in February 1988. At that time, however, we did not believe we had the authority to use a similar standard in applying the fiscal soundness requirements. Thus, FQHMOs have had to meet these requirements on their own.

B. Legislative Changes

With the enactment of Public Law 100–517, the Congress recognized that some FQHMOs are owned or controlled by major corporations with sizeable assets, and that consideration should be given to recognize the availability of such assets if an FQHMO is unable to meet the fiscal soundness requirements. Section 5 of Public Law 100–517 amended section 1301(c) of the HMO Act by directing the Secretary to issue regulations under which the resources of an organization that owns or controls an FQHMO may be considered in meeting the requirements of section 1301(c)(1)(A). The legislation retains the Federal qualification requirements that an HMO demonstrate fiscal soundness and adequate enrollee protections in the event of insolvency. However, when an HMO does not meet one or the other of these requirements during the qualifying process or at any time after receiving Federal qualification, an organization that owns or controls the HMO may now use its resources to guarantee its fiscal soundness and to protect enrollees in the event of insolvency.

C. Proposed Changes to the Regulations

In order to implement the amendments made by section 5 of Public Law 100–517, we propose to add a new paragraph (e) to § 417.107 (redesignated as proposed § 417.120) that outlines the conditions and requirements for using a guarantor to meet the requirements for fiscal soundness and/or the risk of insolvency. As previously stated, the legislative intent of the statutory amendments was to provide more flexibility to the HMO industry. The proposed regulatory changes in proposed redesignated § 417.120(e) provide that flexibility while establishing conditions under which we can ensure that the parent organization is financially able to support the guarantee.

We propose a definition of "guarantor" that establishes that the guaranteeing organization must own the majority of voting equity in or directly control (for example, through the governing body) an HMO or the legal entity of which the HMO is a component. We believe that in using the term "owns," Congress intended that a guarantor be a majority owner or have majority control of the board of directors of the FQHMO, or the legal entity. We invite comments from the public on both our interpretation of the amendment and the applicability of the definition to organizational structures.

We also propose criteria for qualifying and serving as a guarantor that we believe are consistent with the intent of the statute. That is, the eligibility criteria for guarantors are intended to maintain standards for the HMO industry, which in turn strengthen public trust and enhance the growth of the HMO industry. At the same time, to the extent the statute affords HCFA the necessary discretion, we propose to implement the statute in a manner that recognizes corporate trends and acceptable business practices.

We believe that we have selected an approach for screening guarantors that recognizes the strong financial position of parent companies without abrogating statutory requirements for sound fiscal operations and enrollee protection. We have exercised caution in using parental

guarantees because we must now monitor not only the financial viability of the FQHMO, but that of the parent organization. In addition, because FQHMOs are no longer restricted to being separate legal entities, we may have to monitor the financial stability of a legal entity that has a component FQHMO, as well as the legal entity's parent organization. Further, the legislative history to the statutory amendments indicates congressional intent that only large entities with strong financial standing be able to act as guarantors for FQHMOs.

The proposed regulations at proposed redesignated § 417.120(e) establish when a guarantee may be used and describe the application process, including requirements pertaining to the written application and the guarantee instrument. The proposed regulations also address situations when a parent may wish to guarantee more than one FQHMO that it owns or controls, or to guarantee an FQHMO for both fiscal soundness and protection of enrollees in the event of insolvency.

As mandated by the statute, we propose to require as a condition for consideration of resources that the parent organization provide satisfactory assurances that it will assume the financial obligations of the FQHMO. Because Public Law 100–517 removed the requirement that the FQHMO be a legal entity, these proposed regulations also incorporate the new organizational structures open to FQHMOs (outlined earlier in this preamble) and the use of a parental guarantee. For example, a large corporation may apply to serve as a guarantor for a legal entity with an FQHMO component. In this case, the guarantor would have to agree to accept the financial obligations of the entire legal entity, not just the FQHMO.

VI. Response to Public Comment

Because of the large volume of public comments that we usually receive on notices of proposed rulemaking, we cannot acknowledge or respond to them individually. However, we will address all public comments received on this document in the preamble to the document in which these proposed regulations are issued in final form.

VII. Collection of Information Requirements

Proposed regulations at §§ 417.107(d), 417.120(b), 417.120(e), 417.120(q), and 417.152(c) contain information collection requirements that are subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980. Specifically, §§ 417.107(d)(3), (4), (6), and (7) and 417.152(c)(13) contain information collections for those FQHMOs that choose to offer a self-referral option. Sections 417.120(b), 417.120(e)(3), (7), and (8), 417.120(q), and 417.152(c)(7) contain information collections for those FQHMOs that choose to restructure as a component of a legal entity and for those entities that apply to be guarantors. We estimate the additional reporting burden for those FQHMOs that choose to offer a self-referral option to be one hour per report; the additional reporting burden for FQHMOs that are part of a legal entity to be one-half hour per report; and the additional reporting burden for legal entities applying to be guarantors to be one-half hour per report. Organizations and individuals desiring to submit comments regarding these estimates or any other aspect of this collection of information, including suggestions for reducing these burdens, should address their comments to the individual listed in the **ADDRESSES** section of this preamble.

VIII. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a final regulatory impact analysis for any proposed regulation that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of RFA, we treat all HMOs as small entities.

Section 1102(b) of the HMO Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule would have a significant impact on the operations of a substantial number of small rural hospitals. The provisions of this regulation apply only to HMOs. We have determined, and the Secretary certifies, that this proposed rule would not affect a significant number of small rural hospitals and, therefore, have not prepared a rural impact statement.

These proposed rules would amend the regulations governing requirements for FQHMOs by implementing certain changes made by Public Law 100–517. The changes broaden the definition of an HMO, allow an FQHMO to offer a self-referral option and charge deductibles for self-referral services, and allow an FQHMO to use parental resources to meet fiscal soundness and insolvency protection requirements.

Although these proposed rules mainly conform our regulations to the statutory changes made by Public Law 100–517, they include additional clauses that interpret or elaborate statutory changes. While we cannot separate out the effects of our regulatory proposals from the statute, this is arguably a major rule, and one which will significantly affect a substantial number of HMOs. Accordingly, we have prepared the following analysis which, together with the remainder of the preamble, constitutes a Regulatory Impact Analysis and a Regulatory Flexibility Analysis.

- The statute and regulations together open up significant new opportunities for managed care, both through elimination of organizational restrictions and through the creation of the self-referral option. They are intended to broaden opportunities for entities wishing to operate FQHMOs, and to minimize confusion, costliness, and inefficiency in the operation of FQHMOs while preserving the protections for FQHMO enrollees in the event of insolvency of the legal entity.
- The 1988 Amendments and these proposed regulations usher in a new era for HMOs. We believe we have proposed regulations that give FQHMOs substantial freedom to operate new, non-qualified coordinated care products, and to offer self-referral options. These proposed regulations should open new markets for coordinated care, such as small employer groups and employer groups that are hesitant to move from free choice of providers directly to a closed panel of providers. Through judicious decision, FQHMOs should be able to minimize their risks, even in offering a self-referral option, to achieve significant enrollment growth and market share.
- On average, an FQHMO achieves savings of approximately 15 percent of cost compared to costs under indemnity plans. Average annual health care spending in the American economy is approximately $4,000 per family. We estimate that there are more than 35 million Americans enrolled in

FQHMOs, or approximately 15 percent of the population. While this percentage is increasing, the rate of increase has slowed in recent years. If the flexibility afforded by these regulations were to accelerate by only one year, resulting in the switching of an additional 1 percent of families from fee-for-service arrangements into FQHMOs, expected savings to the economy would be about $100 million per year. Self-referral is such an innovative system of health care delivery that we have no basis on which to estimate how many plans will adopt it, let alone estimate its likely marketplace effects over time. However, it appears to us that a shift of 1 percent in market share is a conservative estimate of likely effects. Substantial evidence exists that many families do not switch to HMOs in order to retain trusted physicians or the ability to select a future physician unconstrained by the HMO's panel. If such families comprise 5 or 10 percent or more of the total market share, the effects of this rule could be much larger.

• One alternative provision we considered was to require the legal entity to be a health and welfare organization or other type of organization regulated by the State. This was based on an interpretation of the Congressional reports that health insurers are the only types of organizations which Congress wanted to operate FQHMOs as lines of business. However, because Congress did not address this limitation in the statute, we believe it is preferable to be flexible and allow different types of organizations the opportunity to operate FQHMOs.

We also considered increasing the performance criteria which would be used to test the fiscal soundness of the legal entity. We recommended that the indications for fiscal soundness be the same for FQHMOs which are legal entities and for legal entities which operate an FQHMO as a component of the organization. The purpose of increasing the requirements would have been to safeguard against the possibility of future insolvency. However, our decision not to recommend increased requirements was based on the fact that selection of additional tests for fiscal soundness would have been arbitrary since the size and complexity of organizations selecting the option of organizing the FQHMO as a component is unknown and would not have been effective in achieving the desired objective. Each component of the fiscal soundness requirement is discussed below:

• *Net worth.* We considered requiring an FQHMO to have a minimum net worth in addition to requiring that assets be greater than unsubordinated liabilities. We concluded that this requirement could be unduly burdensome for smaller organizations and could impair future viability by tying up capital necessary for on-going operations. Furthermore, FQHMOs currently are allowed to offer a multitude of other products outside their service area and no additional financial requirements are imposed when they do so. Therefore, it was not reasonable to impose special financial requirements on a legal entity just because it chooses to operate a non-qualified health benefits plan within the FQHMO service area.

• *Sufficient cash flow.* We considered increasing the requirements from "sufficient cash flow and adequate liquidity" to "positive working capital." We chose to retain the existing requirement and not adopt the more stringent positive working capital requirement for the same reasons we chose to retain the same net worth requirement. We believe that changing the existing requirement would not result in more effective safeguards to the viability of the FQHMO and would have created more burdens on the industry without a commensurate benefit to the government. Furthermore, the positive working capital requirement would have been unenforceable since the normal ebb and flow of business affairs cannot be monitored on a daily basis. Therefore, by retaining "sufficient cash flow," we are recognizing that the legal entity must be able to maintain its accounts payable at a level that assures reasonably prompt payment of bills.

• *Cumulative net operating surplus.* We considered requiring that net worth be restricted if the legal entity or its predecessor entity (that is, the FQHMO) could not meet the existing requirement that it have a cumulative net operating surplus for the period covering the three most recent fiscal years and a net operating surplus during the most recent fiscal year. Under the existing regulations, if this test is not met the organization is required to submit a financial plan satisfactory to the Secretary to achieve net operating surplus within the available fiscal resources.

We chose to retain the existing requirements because we concluded that restricting net worth would be unduly burdensome and would not substantially increase the likelihood that the organization would remain fiscally sound. Instead, by continuing to require a financial plan for the FQHMO component that can be monitored on an on-going basis, HCFA can closely evaluate the progress of the organization in strengthening its financial position. We believe this is sufficient.

However, we do intend to increase, at the discretion of the Secretary, the reporting requirements for legal entities operating FQHMOs as a component which do not meet the operating surplus test. In this regard, we intend to reserve for ourselves the option of requiring more frequent reporting, a more specific corrective action plan or other evidence which can assure the Secretary that the organization will be able to maintain on-going operations. These increased requirements can be imposed on a case by case basis through the compliance monitoring process and might, if appropriate, include a requirement that net worth be restricted to provide HCFA with greater assurances that the organization will remain viable.

We have also added a requirement that the FQHMO component be viable. Thus, if the FQHMO component by itself does not have an adequate history of operating surpluses, we will have the authority to request a financial plan. In this way, we can safeguard the interests of the FQHMO enrollees by on-going monitoring of the FQHMO operations. If financial performance deteriorates, we may have concerns about the quality of care provided by the FQHMO. By adding this requirement, we will be able to request corrective action on the part of the FQHMO component specifically.

Thirdly, we considered allowing net worth together with a history of producing net income to substitute for "other arrangements" as described by § 417.107(a)(3)(i)(D) as a way of demonstrating compliance with the insolvency provisions of the law. Contrary to the decision to utilize the same test for fiscal soundness for both a legal entity and a component of a legal entity, we are proposing to place more stringent requirements for insolvency protection in cases where the FQHMO is a component of a legal entity or where the FQHMO offers other health benefits plans outside the qualified service area. In these cases, we are proposing to not allow net worth and a history of producing net income to substitute for restricted reserves because we are not convinced that this will provide adequate protection of FQHMO enrollees in the event of insolvency of the legal entity.

The new option available for an organizational structure creates a potential for more complex and diverse organizations to be able to operate FQHMOs. A costly downturn in one or more of the businesses of the legal entity could occur quite rapidly. In the event of insolvency, the enrollees, creditors and vendors of all the businesses of the

legal entity will make claim to the assets of the legal entity. Thus, rather than allowing net worth and a history of operating surplus to substitute for reserves, we believe the most effective way to protect enrollees is by requiring that the FQHMO or the legal entity as appropriate establish a restricted reserve which can be used only for the explicit purpose of protecting the enrollees of the FQHMO in the event of insolvency. The restricted reserve would have to be held through a Trust Agreement with a bank or some other arrangement satisfactory to the Secretary. Under such an arrangement funds are deposited into the account for use only upon arrival of a specific third party, such as the State Insurance Commissioner or the Secretary, in the event of insolvency or bankruptcy of the legal entity. In this way, we hope to deter the courts from allowing other "injured parties" to have access to these reserves prior to settling the claims of the FQHMO enrollees.

Finally, we considered changing the current practice of allowing FQHMOs to offer other health benefits plans outside their service area to require that these organizations establish a legal entity which would operate the FQHMO and the other health benefits plans as separate lines of business. Under this option, each of these lines of business and products offered by the FQHMO would operate under different names. Upon analysis of the statute and the legislative history of the 1988 Amendments, we concluded that the Congress did not intend to change the status quo for existing FQHMOs, but rather to broaden opportunities. The change described above would have created limitations on the practices of FQHMOs that have been allowed for many years. Therefore, we further concluded that the restrictions imposed on organizations by title XIII only apply to activities within a specified service area.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Health maintenance organization (HMO).

Part 417 of Chapter IV of title 42 would be amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for part 417 is revised to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1866(a), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 13951(a)(1)(A), 1395x(s)(2)(H), 1395cc(a), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Public Law 97–248 (42 U.S.C. 1395mm note); section 9312(c) of Public Law 99–509 (42 U.S.C. 1395mm note); and section 1301 of the Public Health Service Act (42 U.S.C. 300e) and 31 U.S.C. 9701.

2. Section 417.1 is amended by revising the definition of *health maintenance organization* and adding, in alphabetical order, a definition of *self-referral option*, to read as follows:

§ 417.1 Definitions.

* * * * *

Health maintenance organization (HMO) means a public or private legal entity or a distinct component of such a legal entity that—

(1) Is organized under the laws of any State for the purpose of providing or arranging for the provision of basic and supplemental health services; and

(2) Meets the requirements of section 1301 of the PHS Act and the regulations in subparts B and C of this part and §§ 417.168 and 417.169.

* * * * *

Self-referral option means the option that an HMO may offer its enrollees permitting them to obtain certain specified basic health services (which are not emergency services) from sources other than the HMO, in accordance with the rules set forth in § 417.107.

* * * * *

§ 417.101 [Amended]

3. In § 417.101, paragraph (e) is removed.

4. In § 417.103, paragraph (c) is revised to read as follows:

§ 417.103 Providers of basic and supplemental health services.

* * * * *

(c) Paragraph (a) of this section does not apply to the provision of the services of a physician if any of the following conditions is met:

(1) The HMO determines that the services are unusual or infrequently used services.

(2) Because of an emergency, it was medically necessary to provide the services to the enrollee other than as required by paragraph (a) of this section.

(3) The services are provided as part of the inpatient hospital services by employees or staff of a hospital, or provided by staff of other entities such as community mental health centers, home health agencies, visiting nurses' associations, independent laboratories, or family planning agencies.

(4) The services are provided under the self-referral option described in § 417.107.

* * * * *

5. In § 417.104, paragraph (a) is revised to read as follows:

§ 417.104 Payment for basic health services.

(a) *Basic health services payment.* Each HMO must provide or arrange for the provision of basic health services for a basic health services payment that is subject to the following requirements and options:

(1) The payment must be paid on a periodic basis without regard to the dates these services are provided.

(2) The payment must be fixed without regard to the frequency, extent, or kind of basic health services actually furnished.

(3) Except as provided in paragraph (c) of this section, the payment must be fixed under a community rating system, as described in paragraph (b) of this section.

(4) The payment may be supplemented by nominal copayments that may be required for the provision of specific basic health services. Each HMO may establish one or more copayment options calculated on the basis of a community rating system.

(i) Except as provided in § 417.107, an HMO may not impose copayment charges that exceed 50 percent of the total cost of providing any single service to an enrollee, nor in the aggregate more than 20 percent of the total cost of providing all basic health services.

(ii) To ensure that copayments are not a barrier to the utilization of health services or to enrollment in the HMO, there is also a limit on copayments for any calendar year. An HMO may not impose on any subscriber (or enrollee covered by the subscriber's contract with the HMO), copayment charges that exceed 200 percent of the total annual premium that the subscriber (or enrollee) would pay if enrolled under an option with no copayments. This limitation applies only if the subscriber (or enrollee) demonstrates that copayments equal to 200 percent of total premiums have been paid in that calendar year.

(5) If an HMO permits basic health services to be obtained through the self-referral option described in § 417.107, the basic health services payment may be supplemented for these services as follows:

(i) By a reasonable deductible when the service is a physician service.

(ii) By a separate system of copayments that apply only to services obtained through the self-referral option. These copayments are not subject to the limitations set forth in paragraph (a)(4)(ii) of this section.

* * * * *

6. A new § 417.107 is added to read as follows:

§ 417.107 Self-referral option.

(a) *General rule.* An HMO may make available to its enrollees a self-referral option under which they may obtain—

(1) Basic health services that are physician services (as specified in § 417.101(a)(1)), from physicians or other health professionals who are not employed by, under contract or other arrangement with, or otherwise affiliated with the HMO; and

(2) Other basic health services from providers not affiliated with the HMO if—

(i) The services are obtained on the basis of referral by a physician described in paragraph (a)(1) of this section; and

(ii) The HMO preauthorizes the service.

(b) *Scope of self-referral option.* If an HMO makes available to its enrollees a self-referral option, the HMO:

(1) May establish the scope of the self-referral option, including the particular types of services that may be obtained on a self-referral basis, the enrollees to whom it offers the self-referral option, and the copayments and deductibles charged. However, if the HMO offers the option to a particular group, the copayments and deductibles established for the group must apply to all enrollees of the group.

(2) Must establish a plan, including limits and restrictions, for authorizing the provision of basic health services other than physicians' services by unaffiliated providers and health professionals if those services are prescribed by a physician seen on a self-referral basis.

(c) *Approval of self-referral option*—(1) HCFA must approve in advance the establishment or modification of a self-referral option.

(2) To secure HCFA's initial and continuing approval of a self-referral option, the HMO must demonstrate to HCFA's satisfaction that it meets all the requirements of paragraph (d) of this section.

(d) *Requirements for approval.* The HMO must demonstrate that it continues to comply with all requirements for Federal qualification, including that all the basic health services are available and accessible through affiliated providers and health professionals and that, under the self-referral plan, the HMO meets the following requirements:

(1) Limits physician services obtained through self-referral so that expenses for those services are no more than ten percent of the HMO's total expenses for basic health services that are non-emergency physician services.

(2) Maintains incentives for enrollees to use services as provided or arranged for by the HMO.

(3) Maintains systems for planning, organizing, administering, and monitoring the self-referral option as a means of ensuring compliance with all requirements for Federal qualification (as set forth in subparts B and C of this part).

(4) Maintains a specific system for recording and evaluating the HMO's experience with the self-referral option in order to document continued compliance with the ten percent limit in paragraph (d)(1) of this section. The system must include information on expenses and utilization based on actuarially-certified estimates and experience as it becomes available.

(5) Processes and pays claims resulting from the option.

(6) Provides enrollees with a full and understandable explanation of the self-referral option. This information must include the following:

(i) Services covered.

(ii) Limitations or restrictions on services.

(iii) Eligibility requirements.

(iv) Procedures for obtaining services.

(v) Enrollee responsibilities.

(vi) Payment policies.

(vii) Enrollee cost-sharing requirements (including non-covered expenses).

(viii) The inability of the HMO to ensure the quality of these services.

(ix) Impact on continuity of care.

(7) Provides reports to HCFA as follows:

(i) *Content.* The reported information must include expenses paid, incurred and reported expenses not yet paid, and estimates of incurred but not yet reported claims.

(ii) *Frequency.* The reports must be submitted to HCFA on a quarterly basis or at lesser intervals if specified by HCFA.

(8) For the purposes of § 417.120, maintains an adjusted net worth that is equal to three months of expenses (based on actuarially-certified estimates adjusted for experience) for providing the self-referral option. For purposes of the self-referral option, adjusted net worth means net worth excluding land, buildings, equipment, guarantees, intangibles and restricted reserves.

(9) Has in place arrangements to cover at least four months of expenses for the self-referral option if the HMO becomes insolvent.

(10) Ensures that all physician services are furnished by a licensed physician or by another health professional authorized under State law to provide those services.

(e) *Enforcement*—(1) If, at any time, the HMO's ratio of total expenses for self-referred physician services to total expenses for all physician services exceeds ten percent, the HMO must—

(i) Submit a corrective action plan to HCFA;

(ii) Initiate corrective action that is approved by HCFA; and

(iii) Cease marketing the self-referral option.

(2) If HCFA is not satisfied with the HMO's corrective actions, HCFA may revoke approval of the HMO's self-referral option. When approval is revoked, the HMO must cease marketing and offering the option. The HMO may continue to administer the option for contract agreements in effect at the time approval is revoked, but only until the time period covered by such agreements expires.

7. In § 417.120, paragraph (a) is revised to read as follows:

§ 417.120 Fiscally sound operation and assumption of financial risk.

(a) *Fiscally sound operation*—(1) *General requirements.* Each HMO or legal entity of which the HMO is a component must have a fiscally sound operation, as demonstrated by the following:

(i) Total assets greater than total unsubordinated liabilities. In evaluating assets and liabilities, loan funds awarded or guaranteed under section 1305 of the PHS Act are not included as liabilities.

(ii) Sufficient cash flow and adequate liquidity to meet obligations as they become due.

(iii) A net operating surplus, or a financial plan that meets the requirements of paragraph (a)(2) of this section.

(iv) An insolvency protection plan that meets the requirements of § 417.122(b) for protection of enrollees.

(v) A fidelity bond or bonds, procured and maintained by the HMO or the legal entity, in an amount fixed by its policymaking body but not less than $100,000 per individual, covering each officer and employee entrusted with the handling of its funds. The bond may have reasonable deductibles, based upon the financial strength of the HMO or the legal entity.

(vi) Insurance policies or other arrangements, secured and maintained by the HMO or the legal entity and approved by HCFA to insure the HMO against losses arising from professional liability claims, fire, theft, fraud, embezzlement, and other casualty risks.

(2) *Financial plan requirement*—(i) If an HMO that is a legal entity, or a legal

entity of which an HMO is a component, has not earned a cumulative net operating surplus during the three most recent fiscal years, did not earn a net operating surplus during the most recent fiscal year or does not have a positive net worth, the HMO or legal entity must submit a financial plan. The financial plan must be satisfactory to HCFA and must describe projected operations of the HMO or legal entity that will enable it to achieve net operating surplus within available fiscal resources.

(ii) This plan must include:

(A) A detailed marketing plan;

(B) Statements of the legal entity's revenues and expenses on an accrual basis, including a projection of revenues and expenses for the HMO if the HMO is a component of a legal entity or if the HMO offers other benefit packages in the service area;

(C) Sources and uses of funds statements; and

(D) Balance sheets.

* * * * *

8. In § 417.122, paragraph (a) is revised to read as follows:

§ 417.122 Protection of enrollees.

(a) *Liability protection*—(1) Each HMO or legal entity of which the HMO is a component must adopt and maintain arrangements satisfactory to HCFA to protect the HMO's enrollees from incurring liability for payment of any fees that are the legal obligation of the HMO or the legal entity. These arrangements may include any of the following:

(i) Contractual arrangements that prohibit the HMO's health care providers used by the enrollees from holding any enrollee liable for payment of any fees that are the legal obligation of the HMO or the legal entity of which the HMO is a component.

(ii) Insurance, acceptable to HCFA.

(iii) Financial reserves for uncovered liabilities that are acceptable to HCFA, are restricted for use only in the event of insolvency or bankruptcy, and are held for the explicit purpose of protecting the HMO's enrollees from liability for payment of any fees that are the legal obligation of the HMO or of the legal entity of which the HMO is a component. Arrangements that are acceptable to HCFA are trust agreements that include a provision which requires the approval of the State insurance commissioner or other State official with like authority before reimbursement can be made from the reserve. For purposes of this paragraph, "uncovered liabilities" are defined as any health care service cost for which an enrollee may be held liable in the event of the HMO's or legal entity's insolvency or bankruptcy.

(iv) Any other arrangements acceptable to HCFA. If the HMO is a legal entity, and operates no other businesses, a history of sufficient net worth together with a history of operating surplus might be considered satisfactory. However, if the HMO is a component of a legal entity or operates other health benefits plans (inside or outside of its service area), the uncovered liabilities of the HMO must be protected through the use of financial reserves, as described in paragraph (a)(1)(iii) of this section.

(2) The requirements of this paragraph do not apply to an HMO or the legal entity of which the HMO is a component if HCFA determines that State law protects the HMO enrollees from liability for payment of any fees that are the legal obligation of the HMO or of the legal entity of which the HMO is a component.

* * * * *

9. A new § 417.123 is added to read as follows:

§ 417.123 Use of a guarantor.

(a) *Definition. Guarantor* means an organization that has been approved by HCFA, in response to a request made under paragraph (e)(3) of this section, as meeting the requirements of paragraph (e)(4) of this section.

(b) *Basis for use of a guarantor.* If at the time of qualification or at any time after the HMO has been Federally qualified, the HMO or the legal entity of which the HMO is a component does not meet the requirements of §§ 417.120 and 417.122, the HMO or the legal entity may apply to HCFA to have the resources of a guarantor considered for the purpose of meeting these requirements.

(c) *Request for use of guarantor.* The HMO or the legal entity of which the HMO is a component must apply to HCFA in writing to use the financial resources of a guarantor and specify whether the guarantee will be for fiscal soundness or insolvency protection or both. The HMO or the legal entity of which the HMO is a component must submit documentation that the guarantor meets the requirements specified in paragraph (d) of this section. In addition, the HMO or the legal entity must submit the guarantor's independently audited financial statements for the two most recent fiscal years and the guarantor's year-to-date financial statement, including balance sheet, profit and loss statement, and cash flow statement.

(d) *Requirements the organization must meet.* In order for the HMO or the legal entity of which the HMO is a component to use an organization as a guarantor, that organization must meet the following requirements:

(1) Be a legal entity authorized to conduct business within a State of the United States.

(2) Own the majority of voting equity in or directly control the HMO or the legal entity of which the HMO is a component.

(3) Not be under Federal or State bankruptcy or rehabilitation proceedings.

(4) Have a net worth, not including land, buildings, equipment, other guarantees, intangibles and restricted reserves, equal to the greatest of the following:

(i) $5 million; or

(ii) Three months of total operating expenses for the specific HMO that it will guarantee; or

(iii) A net worth in an amount needed to bring the HMO's net worth to a positive figure and that assures that the HMO or the legal entity of which the HMO is a component has sufficient cash flow and adequate liquidity to meet current obligations.

For purposes of insolvency protection only, the guarantor must only meet the greater of paragraph (i) or (ii) of this section.

(5) If the guarantor is regulated by a State insurance commissioner or other State official with like authority, it must meet the net worth requirements of paragraph (d)(4) of this section, with all guarantees and all investments in and loans to organizations covered by guarantees excluded from its assets.

(6) If the guarantor is not regulated by a State insurance commissioner or other State official with like authority, it must meet the net worth requirements of paragraph (d)(4) of this section with all investments in and loans to organizations covered by a guarantee and to related parties (subsidiaries and affiliates) excluded from its assets.

(e) *Multiple-entity guarantees.* If an organization wishes to guarantee more than one HMO or legal entity with an HMO component that it owns or controls, the guarantor must meet the requirements of this section for each HMO or legal entity covered by a guarantee and any other conditions established by HCFA.

(f) *Dual-purpose guarantees.* If an organization wishes to guarantee an HMO or a legal entity with an HMO component for both fiscal soundness and insolvency protection (that is, continuation of benefits in the event of insolvency and protection of enrollees against liabilities), the organization must provide the insolvency protection

through a funded reserve account with a third party restricted for this purpose.

(g) *Guarantee document.* If the request to guarantee an HMO is approved, the HMO or the legal entity must submit to HCFA a written guarantee document signed by the guarantor. The guarantee document must—

(1) State what fiscal soundness requirements are covered by the guarantee;

(2) Establish that the guarantor will assume, on a timely basis, the financial liabilities of the HMO or the legal entity of which the HMO is a component in the event that the HMO or the legal entity is unable to meet its obligations; and

(3) Meet other conditions as established by HCFA.

(h) *Reporting.* The HMO or the legal entity of which the HMO is a component must submit quarterly reports and annual audited financial statements on its own organization and the guarantor. These reports must be submitted in the manner and form requested by HCFA.

(i) *Modification and termination.* The guarantee cannot be modified or terminated unless the HMO—

(1) Requests HCFA's approval at least 90 days before the proposed effective date of the modification or termination; and

(2) Demonstrates to HCFA's satisfaction that the modification or termination will not result in insolvency of the HMO, or failure by the HMO or the legal entity to have total assets greater than total unsubordinated liabilities.

(j) *Nullity of the guarantor agreement.* If at any time the guarantor ceases to meet the requirements of paragraph (d)(4) of this section, the agreement with HCFA is immediately null and void, and the HMO or the legal entity must meet the requirements of §§ 417.120, 417.122, and 417.124(a).

10. In § 417.124, paragraphs (a) and (b) are revised to read as follows:

§ 417.124 Administration and management.

(a) *General requirements.* Each HMO must have administrative and managerial arrangements satisfactory to HCFA, as demonstrated by at least the following:

(1) The HMO, or the legal entity of which the HMO is a component, must have a policymaking body that exercises oversight and control over the HMO's policies and personnel to ensure that management actions are in the best interest of the HMO and its enrollees.

(2) The HMO must have personnel and systems sufficient for the HMO to organize, plan, control and evaluate the financial, marketing, health services, quality assurance program, administrative and management aspects of the HMO.

(3) The HMO must be managed by an executive who has the authority to bind the legal entity in contracts. If the HMO is itself a legal entity, the appointment and removal of the executive must be under the control of the policymaking body. If the HMO is a component of a legal entity, the policymaking body of the legal entity must be a party to the appointment and removal of the executive.

(b) *Full and fair disclosure*—(1) *Basic rule.* Each HMO must prepare a written description of the following:

(i) Benefits (including limitations and exclusions).

(ii) Coverage (including a statement of conditions on eligibility for benefits).

(iii) Procedures to be followed in obtaining benefits and a description of circumstances under which benefits may be denied.

(iv) Rates.

(v) Grievance procedures.

(vi) Service area.

(vii) Participating providers.

(viii) Financial condition including at least the following most recently audited information on the HMO or the legal entity of which the HMO is a component: Current assets, other assets, total assets; current liabilities, long term liabilities; and net worth.

(ix) Organizational relationships, to the extent specified by HCFA (including, but not limited to, a description of other businesses operated by the HMO or the legal entity of which the HMO is a component, the names of other health benefits plans offered, and the geographic areas they serve).

(2) *Requirements for the description*—(i) The description must be written in a way that can be easily understood by the average person who might enroll in the HMO.

(ii) The description of benefits and coverage may be in general terms if reference is made to a detailed statement of benefits and coverage that is available without cost to any person who enrolls in the HMO or to whom the opportunity for enrollment is offered.

(iii) The HMO must provide the description to any enrollee or person who is eligible to elect the HMO option and who requests the material from the HMO or the administrator of a health benefits plan. For purposes of this requirement, "administrator" (of a health benefits plan) has the meaning it is given in the Employment Retirement Income Security Act of 1974 (ERISA) at 29 U.S.C. 1002(16)(A).

(iv) If the HMO provides health services through individual practice associations (IPAs), the HMO must specify the number of member physicians by specialty, and a listing of the hospitals where HMO enrollees will receive basic and supplemental health services.

(v) If the HMO provides health services other than through IPAs, the HMO must specify, for each ambulatory care facility, the facility's address, days and hours of operation, and the number of physicians by specialty, and a listing of the hospitals where HMO enrollees will receive basic and supplemental health services.

* * * * *

11. Section 417.126 is revised to read as follows:

§ 417.126 Recordkeeping and reporting requirements.

(a) *General reporting and disclosure requirements.* Each HMO must have an effective procedure to develop, compile, evaluate, and report to HCFA, to its enrollees, and to the general public, at the times and in the manner that HCFA requires, and while safeguarding the confidentiality of the doctor-patient relationship, statistics and other information with respect to the following:

(1) The revenues and expenses of its operations.

(2) The patterns of utilization of its services.

(3) The availability, accessibility, and acceptability of its services.

(4) To the extent practical, developments in the health status of its enrollees.

(5) Information demonstrating that the HMO has a fiscally sound operation. If the HMO is a component of a legal entity, the legal entity and the HMO component must meet this requirement as directed by HCFA.

(6) Other matters that HCFA may require.

(b) *Significant business transactions.* Each HMO or, as directed by HCFA, the legal entity of which the HMO is a component, must report to HCFA annually, within 120 days of the end of its fiscal year (unless for good cause shown, HCFA authorizes an extension of time), the following:

(1) A description of significant business transactions (as defined in paragraph (c) of this section) between the HMO that is a legal entity and a party in interest, or between a legal entity and a party in interest if the transaction involves or affects the HMO component.

(2) With respect to those transactions—

(i) A showing that the costs of the transactions listed in paragraph (c) of this section do not exceed the costs that would be incurred if these transactions were with someone who is not a party in interest; or

(ii) If they do exceed, a justification that the higher costs are consistent with prudent management and fiscal soundness requirements.

(3) A combined financial statement for the HMO or, as directed by HCFA, the legal entity of which the HMO is a component, and a party in interest if either of the following conditions is met:

(i) Thirty-five percent or more of the costs of operation of the HMO go to a party in interest.

(ii) Thirty-five percent or more of the revenue of a party in interest is from the HMO.

(c) *"Significant business transaction" defined.* As used in paragraph (b) of this section—

(1) *Business transaction* means any of the following kinds of transactions:

(i) Sale, exchange or lease of property.

(ii) Loan of money or extension of credit.

(iii) Goods, services, or facilities furnished for a monetary consideration, including management services, but not including—

(A) Salaries paid to employees for services performed in the normal course of their employment; or

(B) Health services furnished to the HMO's enrollees by hospitals and other providers, and by HMO staff, medical groups, or IPAs, or by any combination of those entities.

(2) *Significant business transaction* means any business transaction or series of transactions of the kind specified in paragraph (c)(1) of this section that, during any fiscal year of the HMO or the legal entity of which the HMO is a component, have a total value that exceeds $25,000 or 5 percent of the HMO's total operating expenses, whichever is less.

(d) *Requirements for combined financial statements*—(1) The combined financial statements required by paragraph (b)(3) of this section must display in separate columns the financial information for the HMO and each of these parties in interest.

(2) Inter-entity transactions must be eliminated in the consolidated column.

(3) These statements must have been examined by an independent auditor in accordance with generally accepted accounting principles, and must include appropriate opinions and notes.

(4) Upon written request from an HMO or legal entity of which the HMO is a component showing good cause, HCFA may waive the requirement that its combined financial statement include the financial information required in this paragraph (d) with respect to a particular entity.

(e) *Reporting and disclosure under ERISA*—(1) For any employees' health benefits plan that includes an HMO in its offerings, the HMO or legal entity of which the HMO is a component must furnish, upon request, the information the plan needs to fulfill its reporting and disclosure obligations (with respect to the particular HMO) under the Employee Retirement Income Security Act of 1974 (ERISA).

(2) The HMO or legal entity of which the HMO is a component must furnish the information to the employer or the employer's designee, or to the plan administrator, as the term "administrator" is defined in ERISA.

(f) *Differentiation of components.* If the HMO offers, or is part of a legal entity that offers, another health benefits plan, as defined in § 417.150, the HMO must—

(1) Be a distinct component that is clearly differentiated from other health benefit plans;

(2) Have processes and records in place that allow the entity to separately identify the enrollees of the Federally-qualified HMO at all times; and

(3) Have a distinct name.

12. Section 417.143 is amended by revising paragraph (a) to read as follows:

§ 417.143 Application requirements.

(a) *General requirements.* This section sets forth application requirements for legal entities or components of legal entities that seek Federal qualification as HMOs; HMOs that seek expansion of their service areas; and HMOs that seek qualification of their regional components as HMOs.

* * * * *

13. Section 417.152 is amended by revising paragraph (c) to read as follows:

§ 417.152 Requirements for a request for inclusion of the HMO option in a health benefits plan; employing entity response.

* * * * *

(c) *Required information.* The request must include the following information:

(1) Documented evidence that HCFA has determined that the HMO is a qualified HMO in accordance with section 1310(d) of the PHS Act and subpart D of this part.

(2) A description of the HMO's service area or proposed service area and the dates basic and supplemental health services will be provided in the area or areas.

(3) Documentation of whether the health professionals who provide basic health services are—

(i) Members of the staff of the HMO;

(ii) Members of individual practice associations;

(iii) Health professionals who have contracted with the HMO for the provision of these services; or

(iv) Any combination of the above.

(4) If the HMO provides health services through individual practice associations, a listing of member physicians by name, specialty, and whether they are accepting new patients from the HMO's enrollment. This listing must be current within 90 days of the date of the request for inclusion.

(5) If the HMO provides health services other than through individual practice associations, each ambulatory care facility's address, days and hours of operation, a statement as to whether it is accepting new patients from the HMO's enrollment, and the names and specialties of the facility's providers of basic and supplemental health services. This information must be current within 90 days of the date of the request for inclusion.

(6) A listing of the hospitals where HMO enrollees will be provided basic and supplemental health services.

(7) The name of the HMO or the legal entity of which the HMO is a component, and the following information:

(i) The name of the legal entity and whether for profit or non-profit, public or private, sole proprietorship, partnership, or stock or non-stock corporation.

(ii) The owners of the legal entity.

(iii) The members of the policymaking body of the legal entity.

(iv) The principal managing officer of the HMO.

(v) The names of other health benefit plans offered by the legal entity to employers in the same service area as the Federally-qualified HMO.

(8) A statement of the HMO's capacity to accept new enrollees and the likelihood of any future limitations on enrollment.

(9) The most recently audited annual financial statements of the HMO or the legal entity of which the HMO is a component.

(10) Proposed implementing agreements between the HMO and the employer, public entity, or designee for the HMO offering.

(11) Sample copies of solicitation brochures and enrollment literature that will be used in the offer of the HMO alternative to employees.

(12) A statement of the HMO's current rates, including any copayments, for basic (and uniformly included supplemental) health services and the dates these rates became effective. If

current rates are not available, state the HMO's estimated rates for these services.

(13) A description of any self-referral option that the HMO makes available to its enrollees, and specify any current deductibles and copayments for basic health services obtained through self-referral, imposed in accordance with § 417.104(a)(5), and the date these rates became effective. If current rates are not available, state the HMO's estimated rates.

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(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: March 2, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: April 22, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–15607 Filed 7–14–93; 8:45 am]

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Thursday
July 15, 1993

Part III

Department of the Interior

Bureau of Land Management

43 CFR Parts 3730 et al.
Rental Fees, Mining Claim Recordation, and Assessment Work; Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3730, 3820, 3830, and 3850

[WO-660-4191-02-24 1A; Circular No. 2648]

RIN 1004-AC07

Rental Fees, Mining Claim Recordation, and Assessment Work

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the Interior Department and Related Agencies Appropriations Act of 1993 (the Act) that requires an annual rental fee of $100 for each mining claim and site located and held under the General Mining Law of 1872 for fiscal years 1993 and 1994. The final rule establishes the procedures for paying and administering the required annual rental fee, puts into regulation the statute's mandatory payment deadlines and its mandatory provision that failure to pay the rental fee on time constitutes abandonment of the claim or site, amends the recording and assessment work regulations to conform to the requirements of the Act, and establishes procedures by which small miners may obtain an exemption. The final rule also makes minor technical amendments to existing regulatory provisions to clarify procedures and further to implement the Federal Land Policy and Management Act of 1976, as amended (FLPMA).

EFFECTIVE DATE: July 15, 1993.

ADDRESSES: Any suggestions or inquiries should be sent to: Director (660), Mail Stop 501, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Roger Haskins, (702) 785-6576, or Frank Bruno (202) 653-5182.

SUPPLEMENTARY INFORMATION: A proposed rule amending certain sections of the regulations at 43 CFR 3730, 3820, 3860, and 3850 was published in the **Federal Register** on March 5, 1993 (58 FR 12878). There were 240 comments received concerning the proposal: 153 from individuals, 1 petition with 18 signatures, 52 from mining businesses, 19 from associations, 6 from offices of Federal agencies, 1 from State government, 8 from attorneys, and 1 from members of Congress. These comments were from all regions of the United States, but the majority originated from the public lands States west of the Mississippi River.

The Department of the Interior, in accordance with 5 U.S.C. 553(d), for good cause finds that it would not be in the public interest to delay the effective date until 30 days after publication. The mining industry needs as much time as possible to prepare to comply with the rule, and the Bureau of Land Management State Offices will not be able to accept filings and payments, or to assist the public in other ways, until the rule is effective.

The comments addressed all aspects of the proposed rule. They were all given careful consideration and are addressed in this preamble, either as general comments or specific comments dealing with particular provisions of the proposed rule. Descriptions of the comments and discussion of their consideration are grouped into either the general comments or specific comments sections below. Many comments criticized the Act requiring the rule and the rule itself. Since the requirements of the Act cannot be amended by this rule, the function of which is to implement the Act, these criticisms are not addressed here except where there may be sufficient confusion concerning the explicit requirements of the Act.

General Comments

Many comments stated that most small miners will not be able to afford the fee or that the fee would have a depressing effect on the mining industry and western economies generally. The rule cannot be amended based on these possible economic effects of the fee, because it has been required by Act of Congress. However, there is discussion later in this preamble concerning whether this rule is a major rule, a determination based primarily on its economic effect.

Many comments also stated that the rule would cause many claims to be abandoned. This may be true; in part, the law and the regulations will have the effect of encouraging the abandonment of frivolous claims that may interfere with multiple use of the public lands.

Several comments supported the fee and some called for consideration of larger fees, more stringent small miner qualifications, or different treatment for lode, placer, and mill site claims. This rule cannot incorporate requirements that go beyond the statutory language.

Two comments said that the proposed rule was confusing. Every effort has been made to make the rule understandable. Field office personnel of the BLM will be prepared to assist the public in complying with the new requirements.

Several comments said that the fee was a burden because only a few months will be left for all of the mining operators to make decisions and act before the fee is due. While it is true that the final rule is being put into place about two months before the fee is due, the general intent of the law and its deadlines have been known since last October. On October 16, 1993, BLM published a notice (57 FR 54102) that the Act had been passed and that the rental fees would go into effect and be payable on or before August 31, 1993. Miners were actually and constructively notified of the law and should be prepared to meet the processing requirements outlined in this final rule.

Several comments asked about the effect of this rule on State law. State law requirements are still required to be followed. Claimants should consult with the States for these requirements. One comment suggested that a provision be inserted to relieve miners from complying with State law. The States will determine what effect, if any, the Act has on their laws.

One comment said that mention of the fees required for oil shale claims under the Energy Policy Act would be confusing under this rule. The fee requirements of the Energy Act must be mentioned, however, because they supersede the requirements of this rule and this must be made clear.

One comment said that the rule should address what will take place in 1995 and beyond. The rule has been written to explain what is required under the new legislation, making clear that the rental fee payment requirement will not apply beyond September 30, 1994, absent further legislation.

Two comments said that the fee does nothing to combat nuisance mining claims because no one would hold a claim if there was no intent to mine, and the fee does not require that work be done on a claim. One comment addressed BLM's statement that the effect of the fee would be to reduce unnecessary surface disturbance and implied that a significant amount of exploration work done in frivolous. Some individuals hold mining claims on Federal lands that are not being diligently developed, but those who are seriously performing exploration work were not meant to be considered in this group. While it is true that the fee does not specifically require diligence, it does impose a cost on the claimant and thus is a disincentive to hold claims that are not being diligently worked. There is also an obvious benefit to the

taxpayer in that the fee is paid to the government.

One comment said the rule was unconstitutional because mining claims recorded prior to the date of the Act are legal contracts and subject only to laws in effect prior to the date of claim location. The comment also stated that the rule is required to be based on law passed by Congress. The rule is based on the Department of the Interior Appropriations Act for 1993, passed by Congress and signed into law on October 5, 1992, which contained the language requiring the fee. In addition, as found in *Last Chance Mining Co.* v. *United States*, 12 Cl. Ct. 551, 555–556 (Cl. Ct. 1987), *aff'd* 846 F.2d 77 (Fed. Cir. 1988), *cert. denied*, 488 U.S. 823 (1988), the statutes and regulations involving the general mining law "do not purport, even by implication, to constitute an offer * * *, it is certainly not an offer to contract." Therefore, the location of a mining claim does not establish a contract and is not subject to contractual legal theory.

Several comments rejected the finding in the preamble that this was not a major rule because it would not have an annual effect on the economy of $100 million or more. They stated that economic multiplier effects would increase the effect beyond $100 million, and that small miners are the principal explorers in the industry and would drop claims for financial, not technical, reasons and eventually would become virtually extinct. The comments referred to a survey of Alaska miners by the Alaska Miners Association, which concluded that more than half of all active Federal claims will be abandoned and that there will be a 50 to 75 percent reduction in exploration expenditures as a result of the fee. We disagree that the effect to the economy will be more than $100 million. The best estimate of the number of active claims on Federal land on the date of the Act is about 900,000. If imposition of the fee results in a 25% drop in claims, 225,000 claims would be dropped. The vast majority of these claims will have had little or no activity on them because claims with good prospects or production would more likely be maintained. Therefore, the economic effect of the loss of these valueless or minimal value claims being dropped will be de minimus. In addition, it is estimated that 380,000 claims may not be subject to the rental fee due to the small miner exemption. This leaves approximately 295,000 claims for which the annual fee would be paid, totaling $29.5 million per year (about $60 million in the first year because both annual payments are due by August 31, 1993, but closer to $5 million in the second year because fees will only be paid on new locations during that year), and well below the $100 million threshold. (It is estimated that the number of new claims located will be approximately one half of those located annually before enactment of the Act, or 40,000.) Small companies with good claim prospects would not be significantly dissuaded from pursuing these claims. In short, only claimants holding claims upon which little or no activity is taking place should find the fee economically prohibitive. Therefore, the fee requirement will not be enough to affect the economy beyond the $100 million level. Admittedly, it is difficult to make such projections, and it is likely that any projection will be proven to be somewhat over- or under-estimated in the end. Also, it is important to note that a certain amount of fluctuation above and below the $100 million annual economic impact figure is allowed for the purposes of determining whether a rule is major. Finally, it should be added that the basic provisions of this rule would be required to be promulgated regardless of any conjectural finding that the rule is major, because these provisions are required by Act of Congress.

One comment disagreed with the statement in the preamble that the rule did not constitute a taking. The comment stated that it constituted a taking because it unexpectedly required a payment of substantial fees. The fee is not expected to cause a taking because payment of the fee will not foreclose all reasonable possibility of the development of a valuable mining deposit, particularly since it in many cases replaces assessment work of equal value.

Several comments urged that existing claims be grandfathered and not be subject to the fee, but this is not possible since the Act specifically provides that "each unpatented mining claim" is subject to the fee. The Act does not generally except existing claims.

One comment said that the fee is unneeded because existing laws are not being enforced and other measures could be taken for the government to achieve the same results and effects as the fee. No other options can be considered in this rule, because the fee is statutorily required, and the rule must therefore be promulgated to implement the fee.

Two comments did not deal specifically with the issues of the rule.

Four comments called for a public hearing regarding the issues of this rule. Administrative hearings for this purpose were not scheduled because the basic fee and exemptions have already been determined by Congress, and are not practicable because it is imperative that the rule be finalized as soon as possible because of the approaching payment deadline.

One comment asked whether a notice of intent to hold could be filed in lieu of paying the rental fee. The answer is no; the only expressly stated exemption from paying the rental fee for claims on public domain lands applies to small miners. Also, a prerequisite for receiving the small miner exemption under the statute is that exploration or production work if performed on 10 or fewer claims, while the purpose of a notice of intent to hold is to allow claimants to maintain claims without developing them.

One comment suggested that a separate arrangement be created for prospectors that would continue to encourage prospecting. This is not possible because the statutory basis for the rule does not contemplate such an arrangement.

Two comments questioned what a claimant is renting when paying the rental fee. The purpose of the provision in the Act is to require miners to pay for utilizing Federal land for mining or mine development activities before it is patented.

One comment asked whether placer mining claims are exempt from the rule. They are not. The Act explicitly covers "each unpatented mining claim, mill or tunnel site."

Two comments questioned the statement in the preamble that a notice of intention to hold that is required under FLPMA would still be required. This statement in the proposed rule preamble was in error. The rental fee requirement can be satisfied by either paying the rental fee or filing the certification of exemption. If, under the Mining Law, assessment work is not required, FLPMA still requires a notice of intention to hold, regardless of rental payments. However, BLM has decided to accept the fee in lieu of a Notice of Intent to Hold, so the Notice is not required in addition to the fee payment. Language has been added to the rule at §§ 3833.0–5(t), 3833.1-5(g), and 3833.1-7(c) to make this clear.

One comment wanted clarification on whether filing notices of intention to hold mill and tunnel sites was still required and whether the tunnel site diligence provision of 30 U.S.C. 27 was affected. The filing of notices on these sites is not required for those who pay the fee and the cited diligence provision is not affected by this rule.

One comment asked whether the rule can address access issues, but this is not

the purpose of the rule, and it does not affect access issues.

Two comments asked where the statute calls for claims to be voided for non-compliance. The statute does not use the word "void" but it specifically states that failure to pay the fee conclusively constitutes abandonment of the mining claim. In such cases BLM routinely issues a decision to void the claim.

One comment states that the rule should address situations where an insufficient amount of money is submitted to cover the claims desired to be held. This will be handled in a similar way to existing BLM manual policy procedures in that the filing will not be totally rejected and fees that are sufficient to cover a percentage of listed claims will be credited to hold those claims and the others will be rejected. Filings that are submitted without fees will not be accepted and will be returned to the claimant/owner without further action. Section 3833.1–3 has been amended to provide for this process.

One comment recommended a sliding scale that would raise the fee per claim for claimants who hold larger claim blocks. This is not possible because the statutory language requires one $100 fee per claim.

One comment stated that, instead of the fee, the assessment work requirement should be increased to $1,000 per year. This is not possible because the statutory language does not allow it, nor does any other provision in the Mining Law.

A comment disputed the proposed rule's preamble, which stated that only speculative and marginal claims would be dropped. The comment cited figures provided by mining companies that indicate a large percentage of active claims in the correspondent's State will be dropped and that many of these would be legitimate, rather than "nuisance" claims. A legitimate mining claim could be defined as one that may have some marginal prospects in the distant future. It is true that some of these may be dropped, but it is still likely that most claims that are considered valuable by those who hold them, for either present or future development, will be held despite the rental fee. Those that are dropped may be relocated by the same or new claimants at a later date, perhaps as soon as 1994, unless the lands are withdrawn from mineral entry, so that no resources will be lost to the nation.

43 CFR 3730.0–1

This new section was added pursuant to a comment. It explains the purpose of Public Law 359 and the regulatory framework for it.

43 CFR 3730.0–3

This new section was added pursuant to a comment. It outlines the proper authority for subpart 3730.

43 CFR 3734.1

This section was amended pursuant to a comment in order to explain more succinctly the interrelationship among Public Law 359, which governed mining in powersite withdrawals, the Interior Department and Related Agencies Appropriations Act of 1993, and FLPMA, which superseded the requirements of Public Law 359.

43 CFR 3821.0–3

This new section was added for purposes of clarification in order to relate the subpart to the proper statutory authorities.

43 CFR 3821.2

This section was amended pursuant to a comment. The language is an improvement over the proposed rule language. It also adds that after October 21, 1976, the 90-day recording time frame for new locations under FLPMA superseded the previous 60-day period under 62 Stat. 162, the Act to reopen the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands to exploration, location, entry, and disposition under the general mining laws (0 and C Act).

43 CFR 3821.3

This section was amended to add that the $100 fee is also in lieu of a notice of intent to hold.

43 CFR 3833.0–3

The term "non-exempt" was added to paragraph (e) of this section to make it clear that the voiding of claims for failure to pay the fee does not apply to those claims that are exempt because of the small miner exemption.

One comment said that 43 U.S.C. 1212 should be removed from the list of authorities. This section of the United States Code makes it a crime to file false or fictitious documents with the Secretary, and is necessary for the enforcement of the regulations.

43 CFR 3833.0–5

The word "State" was added to paragraph (g) to make it clear that the proper BLM office is the relevant State Office. The word "State" was also added to paragraphs (p) and (t). Paragraph (t) was also amended to make it clear that those who pay the fee are not required to file the Notice of Intent to Hold. The definition in paragraph (v) was reworded to cite the specific instances in which fees are non-refundable. A new paragraph (w) was added to define "age to discretion," the term that was used in the statute and also in this rule.

One comment suggested making it clear that the December 30, 1992, FLPMA filing and the rental fee filing mentioned in paragraph (o) of this section can be filed at the same time, which would save administrative work. This is not possible since the deadline for the FLPMA filing is already in the past. Paragraph (o) was reworded to make it clear that small miners who qualify for the exemption will still be required to make FLPMA filings.

Several comments objected to the proposed change from 20 to 15 days for receipt of documents sent by mail in paragraph (m) of the proposed rule, citing future postal service cuts that may result in delays in delivery. There is no current evidence that future mail service will degenerate. However, BLM will monitor the situation to identify any problems reconciling this regulation with the realities of mail service.

One comment said that the filing years defined in paragraph (o) should be the same, in order to simplify the procedures, but that is not possible because the dates are statutorily set.

Two comments questioned whether the definition of "amended location" in paragraph (p) of this section preempts State law regarding the conveyance of unpatented mining claims. It does not. State law still applies for State filing purposes. This definition is amended to make it clear that transfers of interest submitted to BLM to update BLM records, are required to be submitted in accordance with section 3833.3 only.

43 CFR 3833.1–2

A new section was added as a cross-reference to sections 3741.1 and 3821.2 for claims and sites located on Public Law 359 and O and C Act lands respectively.

43 CFR 3833.1–3

This section has been reworded to clarify the processing of partial payments.

One comment stated that this section does not specify the point at which failure to submit the required rental constitutes abandonment of the claim. This is stated in section 3833.0–3(e).

43 CFR 3833.1–4

One comment asked if there was a service charge for filing for the small miner exemption. As outlined in this section, the answer is no. One comment

stated that the waiver of the $5 service charge for those who pay the fee is not appropriate. This service charge was imposed as a fee to cover administrative costs for the processing of annual filings under FLPMA. Those who pay the $100 rental fee will not be causing the BLM to incur such FLPMA filing processing costs. Additionally, Congress specifically authorized BLM to spend up to $5 million annually, to be taken from rental fee receipts, to run the rental fee program, so the rental fee will partially defray BLM's administrative costs in the same way that the $5 does for FLPMA filings. On the other hand, a claimant who qualifies as a small miner and files for an exemption is still required to complete the annual assessment work and file evidence thereof, together with a service charge of $5 per claim, on or before December 30 of each year.

The word "non-refundable" has been added to paragraph (a) to make this charge consistent with other service charges which are also non-refundable. Paragraph (b) was amended to add that rental fees are also in lieu of notices of intent to hold and that certified exemption statements are not required to be accompanied by a service fee. Paragraph (e) was added to detail how credit card payments may be made. Paragraph (f) was added to outline how declining deposit accounts may be used for payment of fees.

43 CFR 3833.1–5

Paragraphs (a) has been reworded to explain more clearly the rental fees that are due and their deadlines. Paragraph (e) has been added in response to a number of comments. It explains that it is possible for a qualified small miner to claim the exemption for one year, but elect to pay the fee in another year. Paragraph (f) has been added to make clear the final date for filing the required annual $550 rental fee for oil shale claims. Paragraph (g) has been added to make it clear that payment of the rental fee releases the claimant from having to file a notice of intention to hold.

One comment stated that the rental fee for the second year should be sufficient to hold the claim through September 30, 1994, the expiration date of the Act, rather than September 1, 1994. In fact, the effect of that second payment is to hold the claim through the end of the assessment year ending September 1, 1994.

One comment stated that there is a duplication between the fee due upon location of a new claim in the first assessment year and the fee due on August 31, 1993, for the second assessment year. There is no duplication because a fee paid for location in the first year holds the claim until September 1, 1993, at which point the second payment holds the claim for the second assessment year. The first payment upon location is not prorated if the location occurs mid-year.

One comment stated that if a claimant locates a claim in the second assessment year there should be no fee required because such a fee cannot be "in lieu" of assessment work. This is not correct because the statute expressly states that new locations are subject to the $100 fee at the time of recordation. There is no reference in the "new location" provision of the statute to the fee being in lieu of assessment work.

One comment said that the second fee payment should not be due until the end of the second year. The August 31, 1993, due date cannot be changed in this rule, because it is a statutory deadline.

One comment stated that there was no reason to address proration in the rule. It is considered necessary because proration will not be allowed.

One comment asked whether a claimant who pays the fee and later decides to drop the claims can get a prorated refund. This section specifically provides that there can be no proration of rental fees for partial years. When the rental fee is paid, its purpose is to hold the claim for the appropriate assessment year. The law does not provide for pro rata refunds. Fee payment demonstrates an intent to hold the claims for that year.

Three comments objected to the "double payment" on August 31, 1993, for assessment years 1993 and 1994. This is not a double payment in the sense that one would pay twice for the same year; it is a requirement for two payments, one for each of two separate years, but with the same deadline for the payments. The payment requirements and deadlines are set by an Act of Congress, and may not be amended in this rule.

Two comments asked whether the fee was a one-time payment or whether assessment work would also be required by the BLM. This section explains that the fee is required for only two years and the fee requirement will expire on September 30, 1994, and that the fee replaces assessment work, unless the assessment work was performed during the period between September 1 and October 5, 1992, in which case the first year's rental fee is an additional payment. Development or exploration work toward developing a claim and producing ore is not prohibited by the rule, and presumably assessment work done during the five weeks before enactment of the Act furthered development or production.

One comment argued that claimants should be able to apply rental fees paid in assessment years 1993 and 1994 to years after 1994 if the claimant has already completed assessment work in one or both of those years. This is not possible because the statute clearly states that for the effective period of the Act, a claimant either pays the rental or, in some cases, files assessment for those years. The fact that work may have been done on a claim for which a rental fee is paid is of no consequence under the Act. The rental fee requirement expires on September 30, 1994. However, several bills are pending in Congress that could change and/or extend these requirements.

One comment interpreted the proposed rule to say that miners who pay the rental fee would not have to file a plan of operations. This is not true. Nothing in this rule changes the plan of operations requirements.

Two comments stated that the $100 fee should be refundable. The fee will be non-refundable except under certain conditions outlined in section 3833.0–5. Essentially, if a claimant pays the fee and receives the benefit expected from the government (in this case that the claim is held for the period covered by the fee) then the fee is non-refundable. The government cannot be responsible for factors beyond its control, such as if for some reason during the assessment year the claimant no longer finds it advantageous to hold the claim. Additionally, refunds would cause an excessive paperwork burden. The decision to pay the fee and hold a claim for the assessment year is one that the claimant must make without relying on the government to expend scarce resources to compensate the claimant for any business planning adjustments that he or she may have made during the year. However, if the claimant does not receive the benefit expected at the time of fee payment (an example would be that the fee is erroneously paid on a claim that is actually null and void at the time of payment, so that there is no claim to pay a fee on), then a refund would be in order.

Two comments said that the fee should not apply to mill sites or that the fee should be reduced for mill sites, but neither is possible because of the statutory language, which states plainly that the fee does apply to mill sites.

One comment, apparently misunderstanding the proposed rule, said that those who pay the fee for the assessment year ending on September 1, 1994, should not also have to file the

FLPMA assessment filing due on December 30, 1994. The proposed rule in fact provided that only those exempted from the fee by qualifying as a small miner will be required to file annual assessment proofs by December 30, 1994. No change is needed in the final rule for the suggestion in the comment to be implemented.

One comment suggested that the word "year" in the Act should be interpreted as ending on August 31, 1993, rather than September 1, which is the beginning and ending date of the two assessment years. The Act does not define the word "year." The August 31 date is clearly just the payment deadline in the same way that December 30 is the deadline for FLPMA filings. Therefore, it was decided that the definition of "year" that would be most consistent with past practice would be the assessment year.

43 CFR 3833.1–6

Language has been added to paragraph (a)(1) to make it clear that a claimant who owns 10 or fewer claims, mill sites, and tunnel sites, and otherwise qualifies for the small miner exemption, is not precluded from paying the rental fee in addition to filing for a small miner exemption. Such a payment would ensure that the claims will not be declared void should the small miner status be denied for a particular claimant. Paragraph (a)(5) has been reworded for clarity, and adds new language to include special use permits for locatable minerals on national forest lands and equivalent State or local permits on non-Federal surface lands as permissible documents for the purpose of qualifying for the small miner exemption. Paragraph (b) was reworded to bring it into agreement with current judicial interpretations and to make reference to other permits being qualifying.

One comment said it was unfair that activity using non-mechanized means did not qualify the claimant for the small miner exemption. This was done because the statute requires that the claims be under a plan or notice, which is not required for most non-mechanized activity.

One commenter asked whether a prospecting club is an "individual" in order to qualify for the small miner exemption. The answer is yes if the claims are located in the name of the club.

The club could be eligible if it holds 10 claims or fewer and meets the remaining requirements for exemption. The members of the club could not each claim a small miner exemption unless claims are each held by one person individually, independently of the club.

One comment asked whether a valid plan of operations is required for operations where no significant disturbance takes place. A plan of operations is required for surface disturbance amounting to 5 acres or more. Operations with only negligible disturbance qualify as casual use under 43 CFR part 3809. One must be under a valid plan or notice in order to qualify for the small miner exemption and if no significant disturbance is taking place, it is not likely that the claimant would be required to file a plan.

One comment stated that no reference should be made to lode and placer claims and that "such" operation should be used rather than "the" operations because the suggested language would conform more precisely with the statute. The language in the proposed rule remains unchanged because it is not in conflict with the statute.

One comment said that paragraph (b) of this section is an unjustified expansion of the statute. It is not considered unjustified because, as with the rest of the rule, it implements in detail what is believed to be the best interpretation of what Congress intended when it passed the Act. The exploration guidelines included are considered to be accepted and routine industry exploration activities.

One comment asked whether assessment work can still be conducted on a percentage of a block of claims to benefit the entire block. The answer is yes, the rule does not change this.

One comment objected to the small miner exemption saying that the average small placer miner could not likely fulfill the work requirement on 10 claims in a lifetime. The comment suggested an alternative fee scheme. The 10-claim exemption and $100 fee is explicit in the statutory language and cannot be changed by regulation.

One comment stated that paragraph (a)(3) of this section appears to violate Constitutional and statutory guarantees against discrimination against women because it limits the rights of a married woman to hold a mining claim. This is a misreading of this provision because it is no way limits a woman's right to hold a mining claim. It treats a married couple as one entity for the purpose of qualifying for the same miner exemption. Both the married woman and man can locate and hold as many mining claims as they wish, but if they want to qualify for the small miner exemption they may hold no more than 10 claims as a family.

The limitation for the purposes of the exemption applies equally to the man as to the woman. It is similar to the limitation put on partnerships, corporations, and others discussed elsewhere in this rule. Finally, the limitation in this provision exists primarily because it is required by the Act.

One comment suggested adding a requirement regarding the evidence needed to certify exploration work by limiting money expended, in order to reduce excess surface disturbance. Surface disturbance is already limited to less than 10 acres, and this suggestion would institute a further restriction that would be impossible to police and is not specifically provided for in the statute.

One comment expressed concern that paragraph (a)(6) of this section could apply to old disturbance not related to the current operation. However, the Act specifies that the surface disturbance is to be "* * * from such mining or exploration operation," which is "under a valid notice or plan of operation." The language of this paragraph likewise specifies that the disturbance is that "* * * caused by the mining or exploration operation."

One comment stated that paragraph (a)(4) excludes any person who owns stock in a mining corporation which holds claims from qualifying personally and separately from the small miners exemption. This is not true because the legal corporation and the individual are separate entities under this section and are separately eligible for the small miner exemption.

Attesting to the ambiguity of the statutory language for the rental fee requirement, many comments were received addressing the two alternative approaches included in the proposed rule as to whether claimants who report that they have done assessment work between September 1 and October 5, 1992, should be excused from paying the rental for the first year.

Four comments supported Alternative One, which required payment from all except those who qualify as small miners, regardless of whether assessment work had been performed during the time in question. One comment came from the Chairman and the Ranking Minority Members of the Appropriations Subcommittee on Interior and Related Affairs of the U.S. House of Representatives. Their comment stated that it was not the intent of Congress to allow an exemption as outlined in Alternative Two, and that Alternative One reflects the will of Congress. They said that such an exemption was included in the House-passed bill, but was struck by the

Senate and not restored in the House-Senate conference. They further said that conferees discussed the deletion and decided that to allow such an exemption would seriously affect the amount of revenue to be generated by the rental fee. The other comments said that work is often not done but assessment work proofs are filed anyway. They said that Alternative Two would further encourage fraudulent reporting of assessment work, and that an adequate monitoring system does not exist. It may be true that fraud exists to some unknown extent. There is no adequate agency system to monitor the reported completion of assessment work for the period between September 1 and October 5, 1992. Because of this practical enforcement concern, the clarification of intent from the Appropriations Subcommittee on Interior and Related Affairs, and the reasoning set forth below, the Department has concluded that claimants who report having completed assessment work between September 1 and October 5, 1992, should be required to pay the rental fee for assessment year 1993. Although the comments from the Appropriations Subcommittee are not binding, the Department finds the reasoning of the comment to be persuasive, authoritative, and in correlation with the arguments made in support of Alternative One in the proposed rule.

In addition to the Congressional comment and the practical enforcement problems entailed in allowing the exemption, the following arguments also favor this alternative. First, the Act of October 5, 1992, does not contain an exemption provision for these claimants. Though earlier versions of the bill contained one, it was removed before enactment. Second, the language of the Act states that the rental fee is in lieu of assessment work "for the assessment year ending at noon on September 1, 1993." 106 Stat. 1378. The assessment year referred to began on September 1, 1992. Therefore, the rental fee requirement is in lieu of assessment work that was conducted or will be conducted during the period beginning on September 1, 1992, and ending on September 1, 1993. Third, the fee is in lieu of filings required by FLPMA that could not be filed for the assessment year beginning on September 1, 1992, until the period running from January 1, 1993, to December 30, 1993. As a result, it was impossible for any claimants to file the FLPMA filing before the enactment of the Act. No claimants, therefore, could have fully completed both requirements that the rental fee is intended to replace during the period between the beginning of the assessment year and enactment of the Act. Fourth, despite the portion of the assessment year that elapsed before the effective date of the Act, the rental fee requirement is prospective in nature because the fee is not due until the future date of August 31, 1993. Although the fee is a new, additional requirement for some claimants, it is nevertheless due prospectively. Last, the legislative history of the statute only shows an express congressional intent to allow an exemption from the rental fee requirement for qualified small miners. 135 Cong. Rec. S15849 (daily ed. September 30, 1992) and 135 Cong. Rec. S15970 (daily ed. October 1, 1992).

Many comments supported Alternative Two. The reasons included the rationale outlined in the proposed rule in addition to arguments of fairness. One comment attached a letter of December 7, 1992, to the Director of BLM from 6 members of Congress, which stated that they believe it was congressional intent to allow the exemption outlined in Alternative Two. Because the previously mentioned letter from the Appropriations Subcommittee was from the leadership of the House subcommittee with jurisdiction, and because the position urged by the December 7, 1992, letter was rejected by the House-Senate Conference Committee before final enactment of the appropriations bill, the Subcommittee letter was accorded more deference.

Several comments asked questions of interpretation if Alternative Two were chosen. Since Alternative One is promulgated in this final rule, these questions are moot, and no discussion is needed of them in this final rule.

Three comments stated that the situation where a small miner takes the exemption in the first assessment year and pays the fee for the second assessment year needed to be clarified. This would be perfectly permissible since the payment of the fee or the filing of assessment work is optional for qualified small miners. A qualified claimant could also pay for the first year and take the exemption for the second year.

One comment said that no one will be able to qualify for the small miner exemption. This section outlines clearly the qualifications for this exemption, and while the precise numbers of qualified miners is not known, it is clear that there are many who will meet the requirements.

Three comments asked whether the 10-claim exemption is State-wide or nation-wide. The exemption applies nation-wide and can include claims in more than one State as long as the number of claims totals 10 or fewer. In accordance with paragraph (a)(2) of this section, the exemption applies to claims on Federal lands in the United States.

Two comments asked whether partnerships were considered a "person" toward qualifying for the 10-claim exemption. Yes. One partnership can qualify for one exemption for up to 10 claims. This means that, for example, a two-person partnership can qualify for 10 claims, not 20 claims because they are two persons. One comment asserted that it was not the intent of Congress to allow partners only one 10-claim exemption. Congress was not clear regarding its intent for the definition of "claimant" under the exemption language of the statute. However, in tax law and business law, partnerships and other business associations are considered single entities.

One comment questioned the definition of the word "notice" in connection with the small miner exemption. The word "notice" as used in this section refers to a mining operation of 5 acres or less for which a claimant can give "notice" of mining activities in accordance with 43 CFR 3809.1–3, rather than file a Plan of Operations.

One comment asked whether miners whose mining activity is not at the plan or notice level can be eligible for the small miner exemption. The answer is no because, as stipulated in this section and the Act, the activity must be at plan or notice level as defined by the surface managing agency.

Two comments urged that claim blocks in different regions should each be allowed a 10-claim exemption, and one comment said that claimants holding more than 10 claims should be able to exempt 10 of them. One comment referred to a Congressional Budget Office (CBO) report as evidence that this was the intent of Congress. This suggestion is not adopted in the final rule, because the statute, as well as other evidence of Congressional intent, allows a claimant to hold no more than 10 claims in total to obtain an exemption. An analysis by the CBO, which is not a policy making office, is not dispositive of Congressional intent.

One comment stated that it was discriminatory for Congress to have required no less than $1,500 in gross revenues per claimant to qualify for the small miner exemption because in some cases small operations would be hampered by State requirements and market economics and fall under the minimum floor to qualify for the exemption. This is beyond the purview of this rule because the $1,500 floor has

been required by Congress in the legislation.

One comment objected to the idea that a claimant's child beyond the age of discretion could alone qualify for the 10-claim small miner exemption, but that a husband or wife of a claimant who is also not a minor could not separately qualify for the 10-claim exemption. This language was expressly contained in the statute and therefore cannot be diverged from in the rule.

One comment stated that the small miner exemption was erroneously aimed at miners who were not serious, and ignored small companies who may locate 200 or more claims in order to explore prudently. No change in the small miner exemption may be made by regulation. Congress has defined the parameters of the exemption by statute. The same comment stated that the definition of small miner should be determined by small miners and junior companies, but this is not possible because the definition has already been established by Congress. Two other comments stated that small miners should be those with 20 or 30 claims or less, which also cannot be accommodated because of the statutory language.

One comment stated that in cases where a claimant overstakes the same ground with both a lode and a placer claim, that only the placer claim should be subject to the fee. The statute makes no such distinction in types of claims or their vicinity on the ground, and specifically requires only that no more than 10 claims may be possessed in order to qualify for the small miner exemption.

Several comments expressed concern about the effect on recreational miners. Some questioned whether a claimant, such as a "recreational" miner or any other, whose activities are not extensive enough to cross the surface management agency's threshold for a notice or plan level operation, would be excluded from the small miner exemption, and if so would this not increase unnecessary degradation of the land. Most stated that recreational miners or mining clubs should be exempted from the fee. The language of the Act specifically requires a claimant to be operating under a plan or a notice in order to qualify for the small miner exemption. It is unlikely that unnecessary disturbance will occur because of the additional requirements for production levels or exploration activity coupled with the authority cited in section 3833.0–3 of the rule, which includes the section of the U.S. Code that makes it a crime to file false or fictitious documents with the Secretary of the Interior. In addition, the surface disturbance is to be conducted pursuant to a valid notice or plan of operation that is subject to the "unnecessary and undue degradation" standard found in FLPMA. The basic requirements for a showing of production or exploration is required in the statute and cannot be excused for recreational miners. There were several comments that stated that recreational miners could not afford the fee, but the fee is required by statute if the small miner exemption requirements are not met. Additionally, all operations, regardless of how an individual claimant classifies his or her own operation, will be evaluated under the standards of this section, which are founded on the statute.

One comment asked whether the claimant who locates in the 1993 assessment year may qualify for the small miner exemption for the 1994 assessment year. The answer is yes. The statute requires that all new locators pay the fee for new claims regardless of how many claims they hold, but these claimants are free to file for the small miner exemption for the second year if they qualify.

One comment stated that the small miner exemption should apply to those who lease 10 or fewer claims. This is not possible because the statute specifically cites the word "claimants," and not lessees, when referring to the small miner exemption. The claimant is the party who owns the claim.

Several comments charged that this section discriminates against marriage and/or legitimate children because spouses and underage children cannot separately claim the small miner exemption within a family. The primary reason for this part of the rule is that the statute specifically requires it.

One comment rejected the idea that a small miner is one who holds 10 or fewer claims. The statutory language specifically defines a small miner in this way, and the rule is bound by the statutory language.

One comment urged that BLM institute a monitoring system to track the full economic impact of the fee. BLM will track the effects on mining claim retention and possibly other parameters.

One comment asked whether it is possible that a plan of operations that has been submitted but not approved can satisfy the requirement for a small miner exemption. The answer is no because the statutory language specifically refers to "valid" plans of operations. A plan that has not been approved cannot be considered valid.

One comment said that the word "corporation" should be removed from the section that deals with entities who qualify for the small miner exemption. The entities listed in the rule, including corporations, have always been regarded as "claimants" under the Mining Law. The clear intent of the Act was to exempt all claimants, including corporations, holding 10 claims or fewer. However, there is nothing in the law or this rule to prevent arm's length stockholders of a corporation—stockholders without control—that possess mining claims from locating their own claims and qualifying as small miners, regardless of the number of claims held by the corporation.

One comment stated that the requirement calling for a minimum gross revenue of $1500 was arbitrary. Two comments said that the August 31, 1993, date also was arbitrary. These requirements were specifically called for in the statute, which the rule is required to reflect.

Two comments stated that operators on private land with Federal minerals cannot comply with the requirement to have a plan of operations or a notice since on these types of lands neither is required. This problem has been addressed in an amendment of section 3833.1–6, which allows submission of a State or local permit in lieu of the Federal Plan of Operations or Notice. There is no evidence in the legislative history that Congress had any intention of singling out these types of claims and making it impossible for them to qualify for an exemption. The revised language of this paragraph is believed to be in accordance with Congressional intent.

Four comments urged that the small miner exemption be expanded to cover more than 10 claims, but this is not possible because the statute provides that 10 claims is the limit.

One comment urged that 10 inactive claims be allowed to be added to the 10-claim exemption, that mill sites be exempt, and that a bond should be the sole requirement for the exemption. None of these comments could be accepted, because they are contrary to specific statutory language.

One comment asked how association placers are counted toward the small miner exemption. Each owner of an association placer counts that claim toward the exemption claim limit. For example, if 8 claimants own a 160-acre association placer, then each claimant would count that claim for purposes of calculating individual holdings for small miner limitations. They would not each claim ⅛ of a claim.

One comment asked whether the $1500 in gross revenues is required to be produced from each claim or from the group of claims in the exemption. The answer is that a minimum of $1500

is required to be produced from the 10 or fewer claims as a group. This amount does not have to be produced from each claim.

One comment asked whether claims that are only being explored must be under a notice or a plan. The answer is yes because that is a statutory requirement.

One comment asked how this section affects 30 family members where no one member has more than one claim. Each "family" member can claim the exemption except as outlined in paragraph (a)(3). For instance, a husband and wife and children under the age of discretion are considered a group who would only be eligible for one 10-claim exemption, but, for example, two brothers over the age of discretion who are not partners could each exempt up to 10 claims for a total of 20.

One comment asked whether it is possible for claimant to pay the rental on two claims and take the exemption on eight. Because the language of the Act only allows for a choice between either paying the fee or doing the assessment work and meeting the filing requirements "* * * on such ten or fewer claims," a claimant may not pay the fee for a portion of his or her ten or fewer claims and take the exemption on the remaining portion. However, a claimant is not precluded from paying the rental fee for claims that have also been included on a small miner exemption form.

43 CFR 3833.1–7

Paragraph (b)(1) was amended to add the word "State" to clarify the proper office for filing. For clarity, paragraph (c) was amended by the addition of the ending date for claiming an exemption for the 1993 assessment year, and again the word "State" was added. Paragraph (c) also includes added language to specify that filing of the certified statement satisfies the requirement to file a notice of intent to hold for qualifying claims located within the period specified. Paragraph (d)(1) was amended to add the other types of permits acceptable to qualify for the exemption. Paragraph (d)(3) was amended to make it clear that multiple certifications for different claim blocks may be filed as long as the total number of claims does not exceed 10. Paragraph (d)(4) was amended to make it clear that the production requirements are not for each claim, but for the claims in total. The words "in detail" for the exploration declaration were removed, because a simple statement of work should suffice.

Paragraph (d)(6) was also amended to reference other allowable permits. A new paragraph (d)(7) was added to require all owners of a mining claim to sign the certified exemption statements. This is to ensure that the 10 claim limitation per claimant will be strictly followed. A new paragraph (d)(8) adds a requirement for a notarized statement intended further to bind the claimants legally to the statement that the claimants sign. Paragraph (e) was amended to add a 30-day payment period after a deferment expires to provide a more equitable process. The word "sites" was removed from this paragraph since sites are not subject to assessment work. Paragraph (e)(1) was amended to add the word "State." Paragraph (e)(1)(i) was amended to change the date from September 30, 1994, to September 1, 1994, which is the end of the 1994 assessment year. Paragraph (f) was revised to make it clear that when the mineral entry is allowed, a refund of previously paid fees is not possible. Paragraph (g) was taken from section 3852.1 and placed here. The phrase "notice of taking" has been changed to "declaration of taking" pursuant to comments received from the National Park Service (NPS).

One comment stated that deferments from the fee should not be allowed because deferments are granted for reasons such as denial of access, so that no assessment would take place. Since the fee is in lieu of assessment work, the comment argued that deferment from paying the fee is not appropriate. However, during debate on the Senate floor on the Act, it was stated and not disputed that claimants who cannot perform assessment work because of legal impediments should not have to pay a fee. This statement may be taken as evidence of congressional intent on this issue. In addition, claims for which assessment work has been deferred are given an exemption from the rental fee. The rental fee is not deferred. Rather, the deferred assessment work will be required upon cessation of the deferment pursuant to 43 CFR subpart 3852. The comment is not adopted in the final rule.

One comment said that the rule should provide that the surface disturbance requirement be measured as of August 31, 1993. This is not possible because it would allow no time for the claimant to submit a certification that same day. Rather, regardless of whether the claimant makes the certification early or on August 31, the certification should state that surface disturbance did not exceed 10 acres on the date of the certification by the claimant, and that surface disturbance would not exceed 10 acres at any time during the period for which the certification is made.

One comment said that failure to provide the evidence required by this section should be a curable defect. This is a curable defect as specified in section 3833.4(b).

One comment requested clarification concerning the proper agency to receive certifications under the rule. The proper agency is the BLM, as outlined in this section.

One comment asked why under paragraph (d)(5)(ii) of this section the claimant would have to make the declaration by August 31, 1993, that assessment work will be done in the following assessment year. This is because the statute requires qualified small miners who choose to do the assessment work to "certify the performance of such assessment work to the Secretary by August 31, 1993." Because the certification date occurs before the assessment work will be done for the assessment year ending September 1, 1994, the claimant is certifying that the assessment work will be done in the coming year. If the claimant determines that no assessment work will be performed in the second assessment year, then the claimant must make this determination and submit the fee by August 31, 1993.

One comment said that the term "first half of the mineral entry final certificate" has no legal significance. Paragraph (f) and section 3851.5 have been amended to make it clear that rental payment is not necessary for claims that are subjects of patent applications when the authorized officer has allowed mineral entry pursuant to 30 U.S.C. 29 and part 3860. The term "first half of the mineral entry final certificate" is no longer referred to in the final rule.

One comment questioned whether a person who is part of a corporation, association, or partnership that qualifies for a 10-claim exemption can also qualify for an additional small miner exemption under his or her own name. The answer is yes if the person is a non-controlling shareholder of a corporation. But if the person is a named partner or a named member of the association that holds 10 mining claims, that person cannot file for an additional 10 claim exemption. The reason is that a corporation exists as a legal entity on its own while a partnership or association is a group of individual co-owners. In these co-ownership arrangements, the interest will not be calculated in fractions such as for one-half ownership in a claim in order to qualify for the small miner exemption. One-half ownership in a claim will count as one

claim for the purposes of qualifying for the small miner exemption.

One comment cited various interpretations of the 10 acre disturbance standard. The 10 acres applies to the claimant's entire mining operations. The 10 acres or less surface disturbance is related to the mining activity or exemption work being conducted pursuant to a valid notice or plan of operation. Any falsification under these or any other requirements of this rule is subject to penalty under 18 U.S.C. 1001.

One comment asked whether a claimant is required to apply for the small miner exemption at the same time for both 1993 and 1994. The answer is no. August 31, 1993, is the deadline for filing, but not the only day for filing, for both years for claims located on or before October 5, 1992. One certification could precede the other as long as they are both filed by August 31.

One comment asked if there are special forms to fill out for the small miner exemption. The answer is yes and they are explained in this section of the regulations.

Two comments asked whether a claimant will have a chance to pay the fee if turned down for a small miner exemption after August 31, 1993. The statute requires, for all active claims at the time of enactment, either payment of the rental fee or submission of a certification for the small miner exemption by August 31, 1993. If the claimant is found not to qualify for the exemption, there is no provision in the statute for payment after that date. If there is any doubt as to qualification, it will be advisable for the claimant either to submit the certification early enough for any defects to be cured before August 31, 1993, or to pay the rental fee.

One comment said that the rule does not precisely conform to the language of the Act pertaining to abandonment of a mining claim, because it refers to a "declaration" of abandonment while the Act does not mention a "declaration." The declaration of abandonment will simply be formal notice by the government that abandonment has taken place by the date specified in the law. A similar declaration has been used over the years for claims that are abandoned for failure to make proper filings under FLPMA, even though no "declaration" language appears in that law.

One comment questioned whether a joint-ownership claim could be declared abandoned and void for failing to pay the fee when a deferment of assessment work has been denied. The answer is yes because the failure to pay would apply to all the owners on record, including cases of single owner claims.

One comment said that exploration or production reporting should be done on the calendar year, as with Federal taxes, rather than the assessment year. The assessment year system was chosen because mining work is done based on assessment years under the Mining Law.

One comment suggested that a certification form be created to help claimants in their filings. Such a form is being created.

43 CFR 3833.2–1

The NPS requested that they be notified concerning the status of fee payments for claims on NPS lands, as they are notified of FLPMA filings. In response to this comment, paragraph (e) has been amended to direct BLM to report the status of all claims on NPS lands to NPS.

43 CFR 3833.2–3

Paragraph (e) was added to make it clear that payment of the rental fee for claims located and recorded on or after September 1, 1994, and on or before September 30, 1994, will serve as a notice of intention to hold for the purpose of holding the claim for assessment year 1995. No further FLPMA filing will be required for such claims by the December 30, 1995, filing deadline.

One comment stated that this section was unnecessary because it restates existing law. The new addition does not restate existing law, but rather explains the effect of the new statute on existing law.

43 CFR 3833.4

Paragraph (a)(1)(i) was reworked for clarity and includes new language that makes it clear that failure of a qualified small miner to make required assessment work filings results in abandonment of the claim. Paragraph (a)(2) was amended to make it clear that failure to file the certification as specified is likewise an abandonment. One comment pointed out that a December 2, 1988, final rule (53 FR 48876) apparently inadvertently removed language that provided that failure to provide the complete information required under section 3833.2–4 (a) and (b) is a curable defect. Section 3833.4(b) has been amended to correct this omission. This amendment does not negate the responsibility of the claim holder to make timely FLPMA filings.

One comment stated that paragraph (b) amounted to an abandonment of interest by BLM in verifying that the small miner exemption is justified. This paragraph merely provides for a 30-day period for a claimant to complete a timely but unintentionally insufficient filing. Such a failure to provide complete information for the certification filing for the small miner exemption within this 30-day period will reinstate the claimant's obligation to pay the rental fee. Failure to pay the rental fee on time constitutes abandonment. For all other requisite filings, a failure to provide the missing information within this time period will constitute abandonment for failure to make a complete annual filing as required by FLPMA.

One comment stated that when mistakes are found in rental fee documents by BLM that could cause an inadequate amount of fees to be submitted, BLM should allow claimants to correct the deficiency within 30 days after a notice of such a mistake is sent by BLM of the mistake allowing 30 days to comply. If a small miner certification filing is submitted by the August 31, 1993, deadline, and errors are found in the submission, the authorized officer will allow a grace period of 30 days after receipt of notification from BLM. However, there is no grace period after August 31, 1993, for payment of rental fees for claims existing on the date of the Act or located during the first assessment year.

43 CFR 3833.5

Paragraph (d) has been amended to require BLM to look only to official recordation files for ownership information when serving process in contest proceedings. This puts the burden on the owners to keep BLM informed of ownership changes as provided in section 3833.3.

43 CFR 3850.0–9

Three comments challenged the finding that it takes the public eight minutes per response to comply with assessment work. The public reporting burden estimate described in paragraph (b) of this section does not refer to the time it takes a claim holder to complete assessment. The time estimate refers to the time it may take the public to file for a deferment as described in section 3852.2. The information collection was approved by the Office of Management and Budget and comments should be forwarded to the Information Collection Officer at the address indicated.

43 CFR 3851.1

One comment asked whether assessment work on one claim could also apply to contiguous claims if the work benefits all claims. Yes, and in addition, this final rule makes no

change in how assessment work is accomplished for those claimants who qualify as small miners and are required to file an annual assessment affidavit.

One comment asked whether claimants will be required to do assessment work in States that require it as well as pay the fee. The answer is yes for those States that require assessment work. The claimant should check with the State for the requirements of State law.

A comment suggested that the regulatory language stating that claims on which work is done as a group are required to be contiguous should be changed because recent court decisions held that such group work claims need not be contiguous. See *Powell* v. *Atlas Corp.*, 615 P.2d 1225, 1228 (Utah 1980). Paragraph (c) has been amended to remove reference to "contiguous" claims and instead insert the phase "covers the same mineral deposit."

43 CFR 3851.3

Paragraph (b) was amended to make it clear that failure to perform assessment work causes the mineral estate to revert to the public domain and remain open to location, absent a mineral withdrawal. Paragraph (c) was amended to make it clear that the $550 oil shale fee is an annual fee.

43 CFR 3851.5

Paragraph (a) was added to include a reference to the rental fee for completeness. Paragraph (b) was amended to make reference to mill sites and the payment of the rental fee, and to clarify when the rental fee is payable if the final certificate is canceled. The section has also been amended to make clear when mineral entry is allowed in cases where patent is applied for.

43 CFR 3852.1

Paragraph (b) was transferred to 3833.1–7(g) and amended to refer to exemption from the rental fee requirement. A comment requested a clarification of the phrase "* * * or the claimant has otherwise been denied access to his mining claims or sites * * *". The comment also requested a further clarification of what proof would be required to document a taking or access exemption. Denial of access means that BLM, in consultation with NPS, has determined as reasonable the claimant's assertion that he has been denied the ability to operate on his claims. This would include situations where the NPS has permanently denied authorization to the claimant to exercise rights to the mining claim. Concerning the forms of exemption proofs that would be acceptable, these would include copies of declarations of takings, or NPS letters that state the denial of access, or any other judicial or administrative order. A declaration by the claimant alone will not be acceptable. When a claim holder has been denied access to his/her mining claims by the NPS, the claim holder is not required first to obtain a deferment of assessment work from BLM pursuant to 43 CFR part 3852 in order to be exempt from the rental fee requirement.

The principal author of this final rule is Roger A. Haskins, Division of Mineral Resources, Nevada State Office, with assistance from Frank Bruno, Division of Solid Minerals, and from the Division of Legislation and Regulatory Management, BLM, Washington Office, and the Office of the Solicitor, Department of the Interior.

It has been determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual, chapter 2, appendix 1, item 1.10, and that the rule will not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. It is likely that some percentage of mining claims will be abandoned because of the rental fee requirement, but it is very difficult to identify a number. The $100 rental fee would be paid on top of expenditures for mining activity. A large company with the capacity to pay the fee may be reluctant to do so if it holds many speculative claims. Deciding factors would be the marginal nature of the operations and the speculative value of the claims. Because it is currently easy to hold a mining claim for speculative purposes, we may see claims in this category abandoned, since it will no longer be as attractive to hold them. Most claims with good production or exploration prospects would likely be held. Dropping the others should produce little negative economic effect. It is likely that the rental fee will result in a lower level of exploration activity, but it is not likely that this will have a significant economic effect, because the fee is nominal for a claim with good exploration prospects.

The Department also certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility (Act (5 U.S.C. 601 *et seq.*). The fee may represent an economic consideration for a small, marginal operation that does not quality for an exemption under the rule. However, most small operations would qualify. A small entity that holds a valuable mining claim will not be deterred by the annual fee, and many of them will qualify for an exemption.

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. The rule will have no effect on private property rights.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The provisions for collection of information contained at 43 CFR parts 3730, 3820, 3833 and 3850 have previously been approved by the Office of Management and Budget and assigned clearance numbers 1004–0114, 1004–0104, and 1004–0110, and subsequently consolidated in 1004–0114, with minor revisions.

Public reporting for this collection of information is estimated to average 8 minutes (0.125 hours) per response, including time for gathering and maintaining the data needed, and reviewing and completing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, should be sent to the Division of

Information Resources Management, BLM (783), 1849 C Street NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1004–0114, 1004–0104, or 1004–0110), Washington, DC 20503.

List of Subjects

43 CFR Part 3730

Administrative practice and procedure, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3820

Mines, Monuments and memorials, National forests, National parks, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

43 CFR Part 3830

Mineral royalties, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR 3850

Assessment work, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–79); the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776); sections 441 and 2478 of the Revised Statutes, as amended, (43 U.S.C. 1457 and 1201); sections 2319, 2322, and 2324 of the Revised Statutes, as amended (30 U.S.C. 22, 26, and 28–28e), and section 310 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1740); parts 3730, 3820 and 3850, Groups 3700 and 3800, Subchapter C, chapter II of title 43 of the Code of Federal Regulations are amended as follows:

Dated: June 25, 1993.

John D. Leshy,

Solicitor.

PART 3730—PUBLIC LAW 359; MINING IN POWER SITE WITHDRAWALS: GENERAL

1. The authority citation for part 3730 is added to read as follows:

Authority: 69 Stat. 681, 30 U.S.C. 621–625; 43 U.S.C. 1701 *et seq.*; 106 Stat. 1374, 1378–1379.

Subpart 3730—Public Law 359; Mining in Power Site Withdrawals: General

2. Section 3730.0–1 is revised to read as follows:

§ 3730.0–1 Purpose; lands open.

The purpose of the Mining Claims Rights Restoration Act of August 11, 1955 ("Act") is to permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development and other purposes, except for lands that:

(a) Are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other act of Congress; or

(b) Are under examination and survey by a prospective licensee of the Federal Energy Regulatory Commission under an uncancelled preliminary permit which has not been renewed more than once.

3. Section 3730.0–3 is revised to read as follows:

§ 3730.0–3 Authority.

The authority for the regulations in this part is the Act of August 11, 1955 (69 Stat. 681, 30 U.S.C. 621–625), section 314 of the Act of October 21, 1976 (90 Stat. 2769, 43 U.S.C. 1744), and Public Law 102–381, October 5, 1992 (106 Stat. 1374, 1378–1379).

4. Section 3730.0–9 is added to read as follows:

§ 3730.0–9 Information collection.

(a) The collections of information contained in subpart 3730 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0110 and subsequently consolidated with 1004–0114. The information will be used to allow the authorized officer to determine whether a mining claimant is qualified to hold a mining claim or site for the exploration, development, and utilization of minerals on all public lands that are withdrawn for power development. The information collected will be used to make this determination. A response is required to obtain a benefit in accordance with the Act of August 11, 1955 (Pub. L. 84–359, 30 U.S.C. 621–625), section 314 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1744), and the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–1379).

(b) Public reporting burden for this information is estimated to average 8 minutes per response, including time for reviewing instructions, searching existing records, gathering and maintaining the data collected, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden; to the Information Collection Clearance Officer (783), Bureau of Land Management, 1849 C St., NW, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project, 1004–0114, Washington, DC 20503.

Subpart 3734—Location and Assessment Work

5. Section 3734.1 is amended by removing paragraph (d) and revising paragraphs (a) and (c) to read as follows:

§ 3734.1 Owner of claim to file notice of location and assessment work.

(a) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 (a) and (b), shall file a notice or certificate of location or notice of transfer of interest with the proper State Office of the Bureau of Land Management pursuant to §§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title, and pay the rental fees required by the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–1379). The document shall be marked by the owner that it is being filed pursuant to the Act of August 11, 1955, the Act of April 8, 1948, or both, as prescribed by § 3833.5(c) of this title.

* * * * *

(c) The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3730.0–1 shall perform and record annual assessment work or pay an annual rental fee of $100 per unpatented mining claim, mill site, or tunnel site in lieu of the annual assessment work or Notice of Intent to Hold, pursuant to subpart 3833 of this title.

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

6. The authority citation for part 3820 is added to read as follows:

Authority: 62 Stat. 162; 48 U.S.C. 364a–364c; 16 U.S.C. 482a; 25 U.S.C. 461–479; 16 U.S.C. 251–255; 16 U.S.C. 447; 49 Stat. 1817; 16 U.S.C. 450z; 50 Stat. 1827; 16 U.S.C. 460y; 42 U.S.C. 4332; 30 U.S.C. 22 *et seq.*

Subpart 3821—O and C Lands

7. Section 3821.0–3 is added to read as follows:

§ 3821.0–3 Authority.

The authorities for the regulations in this subpart are the Act of April 8, 1948 (62 Stat. 162), section 314 of the Act of October 21, 1976 (90 Stat. 2769), and Public Law 102–381, October 5, 1992 (106 Stat. 1374, 1378–1379).

8. Section 3821.2 is revised to read as follows:

§ 3821.2 Requirements for filing notices of locations of claims; descriptions.

The owner of any unpatented mining claim, mill site, or tunnel site located on land described in § 3821.1 shall file a notice or certificate of location or notice of transfer of interest with the proper State Office of the BLM pursuant to §§ 3833.1, 3833.3, 3833.4, and 3833.5 of this title and pay the rental fees required by the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–1379). The document shall be marked by the owner as being filed under the Act of April 8, 1948 (62 Stat. 162).

9. Section 3821.3 is revised to read as follows:

§ 3821.3 Requirement for filing statements of assessment work.

The owner of an unpatented mining claim, mill site, or tunnel site located upon O and C lands shall perform and record proof of annual assessment work, or pay an annual rental fee of $100 per unpatented mining claim, mill site, or tunnel site, pursuant to subpart 3833 of this title.

PART 3830—LOCATION OF MINING CLAIMS

10. The authority citation for part 3830 is revised to read as follows:

Authority: 30 U.S.C. 22, secs. 2319 and 2478 R.S., as amended (43 U.S.C. 1201), 31 U.S.C. 9701, 16 U.S.C. 1901, 1907; 43 U.S.C. 1734, 1740, 1744, and 1782; 106 Stat. 1374, 1378–1379.

11. Subpart 3833 is amended by removing the note at the beginning of the subpart and by revising the subpart heading to read as follows:

Subpart 3833—Recordation of Mining Claims, Mill Sites, and Tunnel Sites and Payment of Service Charges; and Payment of Rental Fees

12. Section 3833.0–1 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, by adding in newly designated paragraph (e), immediately following the word "Act" the parenthetical acronym "(FLPMA)", and adding a new paragraph (c) to read as follows:

§ 3833.0–1 Purpose.

* * * * *

(c) The payment in the same office of an annual rental fee, if required, for each mining claim, mill site, or tunnel site held by the claimant;

* * * * *

13. Section 3833.0–3 is amended by adding after "43 U.S.C. 2" in paragraph (b) the citations; ", 43 U.S.C. 1212, and 43 U.S.C. 1457," by revising paragraph (a); and by adding paragraphs (e) and (f) to read as follows:

§ 3833.0–3 Authority.

(a) Sections 314(a) and (b) of FLPMA (43 U.S.C. 1744) require the recordation of the notice or certificate of location of unpatented mining claims, mill sites, and tunnel sites, and the filing of affidavits of assessment work performed, notices of intent to hold, or detailed reports for each unpatented mining claim, mill site, and tunnel site, in the proper BLM office within specified time periods. Section 314(c) of FLPMA provides that a failure to record the required documents within the time limits imposed by the statute constitutes a conclusive abandonment of the mining claim, mill site, or tunnel site, which shall be void.

* * * * *

(e) The Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–1379), requires an annual rental fee of $100 to be paid to the proper office of the Bureau of Land Management for each non-exempt mining claim, mill site, or tunnel site located or held under section 314(b) of FLPMA for the assessment years ending in 1993 and 1994. With certain exceptions, this rental fee is in lieu of the requirement to perform and record annual assessment work under 30 U.S.C. 28–28e and section 314(a)(1) of FLPMA. Failure to pay the fee within the time limits prescribed by the Act of October 5, 1992, constitutes a statutory abandonment of the non-exempt mining claim, mill site, or tunnel site, which shall thereupon be void. Provisions relating to rental fee and exceptions are contained in §§ 3833.0–3(f), 3833.1–5, 3833.1–6, and 3833.1–7.

(f) Section 2511(e)(2) of the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776), requires oil shale claim holders to pay an annual fee of $550 per oil shale claim, notwithstanding any other provision of law, including the Act of October 5, 1992. This requirement supersedes the fee requirements of the Act of October 5, 1992, insofar as they relate to oil shale claims.

14. Section 3833.0–5 is amended by revising paragraphs (a), (g), (m), and (o), adding two sentences to the end of the concluding text of paragraph (p), and adding paragraphs (t), (u), (v), and (w) to read as follows:

§ 3833.0–5 Definitions.

* * * * *

(a) *FLPMA* means the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701) *et seq.).*

* * * * *

(g) *Proper BLM office* means the Bureau of Land Management State Office listed in § 1821.2–1(d) of this title, and, in Alaska, the Fairbanks BLM Office, having jurisdiction over the area in which the claims or sites are located.

* * * * *

(m) *File* or *filed* means being received and date stamped by the proper BLM office. For the purposes of complying with § 3833.2, a filing is timely if the required affidavit of assessment work or notice of intent to hold is received within the time period prescribed by law, or if mailed to the proper BLM office, is in an envelope clearly postmarked by the United States Postal Service within the period prescribed by law and received by the proper BLM office within 15 calendar days subsequent to such period. This 15 day period does not apply to filings made pursuant to §§ 3833.1–2, 3833.1–5, or 3833.1–7. (See § 1821.2–2(e) of this title if the last day falls on a day the office is closed).

* * * * *

(o) *Filing year* means the time period during which documents and fees are required to be provided to the proper BLM office. The time periods set forth in each statue are as follows:

(1) Except for filing by a small miner qualifying for an exemption under § 3833.1–7(d), filings under FLPMA that would have been due on or before December 30, 1993, and December 30, 1994, are waived effective January 1, 1993, and so long thereafter as the Act of October 5, 1992, is in effect. The annual filing for each claim or site required for the assessment year ending on September 1, 1992, shall be filed with the proper BLM office on or before December 30, 1992.

(2) Filings under the Act of October 5, 1992, shall be made by August 31, 1993, except for new claims located after August 31, 1993.

(p) * * *

* * * An amendment to a notice or certificate of location shall not be used to effect a transfer of ownership of interest or to add owners. Such transfers or additions shall only be filed with the proper State Office of the BLM pursuant to § 3833.3.

* * * * *

(t) *Rental fee* means the fee required by the Act of October 5, 1992 (Public Law 102–381, 106 Stat. 1374, 1378–1379), which is paid to hold a mining claim, mill site, or tunnel site. The rental fee is in lieu of the requirements

for performing assessment work under 30 U.S.C. 28–28e and for filing an annual affidavit of labor or Notice of Intent to Hold with the proper State Office of the Bureau of Land Management under section 314 (a) and (c) of FLPMA and § 3833.2. Under certain conditions, a small miner may be exempt from the rental fee requirement, or a claimant may be granted a deferment of assessment work pursuant to subpart 3852 of this title. The rental fee requirements will expire on September 30, 1994. The rental fee requirements and exceptions are governed by §§ 3833.1–5, 3833.1–6, and 3833.1–7.

(u) *Small miner* means a claimant/owner of a mining claim(s), that meets the requirements of §§ 3833.1–6 and 3833.1–7.

(v) *Nonrefundable* means non-returnable as follows:

(1) Service charges are not returnable after the document received has been docketed and/or serialized.

(2) Rental fees are not returnable unless the mining claim or site has been determined, as of the date the fees were paid, to be null and void *ab initio* or abandoned and void by operation of law.

(w) *Age of discretion* means that age at which, pursuant to State law, an individual is legally entitled to manage his or her own affairs, and to enjoy civic rights.

15. Section 3833.0–9 is added to read:

§ 3833.0–9 Information collection.

(a) The collections of information contained in subpart 3833 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0114. The information will be used to allow BLM to record mining claims, mill sites, and tunnel sites; to maintain ownership records to those claims and sites; to determine the geographic location of the claims and sites recorded for proper land management purposes; and to determine which claims and sites are being held by their owner(s) under applicable Federal statute. A response is required to obtain a benefit in accordance with section 314 of FLPMA, as amended, and the Act of October 5, 1992 (Pub. L. 102–381, 106 Stat. 1374, 1378–1379).

(b) Public reporting burden for this information is estimated to average 8 minutes per response, including time for reviewing instructions, searching existing records, gathering and maintaining the data collected, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing the burden; to the Information Collection Clearance Officer (783), Bureau of Land Management, 1849 C St. NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project, 1004–0114, Washington, DC 20503.

§ 3833.1 [Amended]

16. Section 3833.1–1 is amended by replacing the term "the Act" wherever it appears in paragraph (a) with the acronym "FLPMA".

§ 3833.1–2 [Amended]

17. Section 3833.1–2(a) is amended by adding a new sentence at the end of the paragraph to read as follows:

(a) * * * (See § 3734.1(a) of this title for mining claims and sites filed under Pub. L. 84–359 (69 Stat. 681) and § 3821.2 of this title for mining claims and sites filed on O and C lands).

* * * * *

18. Section 3833.1–3 is revised to read as follows:

§ 3833.1–3 Service charges and rental fees; form of remittance.

(a) All service charges and rental fees shall be payable by United States currency, postal money order, or negotiable instrument payable in United States currency and shall be made payable to the Department of the Interior-Bureau of Land Management, or by a valid credit card acceptable to the Bureau of Land Management.

(b)(1) Filings submitted pursuant to § 3833.1–2 that are not accompanied by full payment of the rental fees required by § 3833.1–5 will be processed pursuant to paragraph (b)(3) of this section. Filings for which the required rental fee is deficient after application of paragraph (b)(3) of this section by the authorized officer will be rejected.

(2) Filings submitted pursuant to §§ 3833.2, 3833.3, or 3833.1–7, and amended locations filed under § 3833.0–5(p), that are not accompanied by the full payment of service charges set forth in § 3833.1–4 shall be curable. Such filings shall be noted as being recorded on the date received provided that the claimant submits the proper service charge within 30 days of receipt of a deficiency notice from the authorized officer. Failure to submit the proper service charge shall cause the filing to be rejected and returned to the claimant/owner.

(3) If a claimant fails to submit the proper service charge within 30 days of receipt of a deficiency notice from the authorized officer, the authorized officer will apply the service charges and rental fees received to existing recorded filings in ascending numerical order of serialization. Existing filings to which no service charge or rental fee could be applied because of the insufficiency of the funds paid to the authorized officer will be held for rejection in the same manner as service charges pursuant to paragraph (b)(2) of this section.

(4) Beginning on October 6, 1992, notices of location for new mining claims or sites that are filed with insufficient charges and rental fees will not be accepted and will be returned to the claimant/owner without further action.

19. Section 3833.1–4 is revised to read as follows:

§ 3833.1–4 Service charges.

(a) Each notice or certificate of location of a mining claim, mill site, or tunnel site filed for recordation shall be accompanied by a non-refundable service charge of $10.00.

(b) Annual filings submitted pursuant to § 3833.2 shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site. A service charge is not required to accompany the rental fee submitted in lieu of assessment work or Notice of Intent to Hold as required by § 3833.1–5 or the certified statement of exemption required to be filed by § 3833.1–7.

(c) Amendments to a previously recorded notice or certificate of location shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site.

(d) Each transfer of interest document filed pursuant to § 3833.3 shall be accompanied by a nonrefundable service charge of $5.00 for each mining claim, mill site, or tunnel site affected.

(e) The claimant/owner may authorize the BLM to charge payment of service charges and rental fees to his credit card under § 3833.1–3(a), by transmission of a facsimile authorization bearing the signature of the claimant/owner to the authorized officer, or the authorized officer may accept such authorization telephonically if the identity of the claimant/owner is established to the satisfaction of the authorized officer.

(f) The claimant/owner may also maintain a declining deposit account with the State Office of the BLM where the mining claims and sites are recorded for the payment of service charges and rental fees. The authorized officer may deduct the necessary service charges and rental fees from such account at the direction of the claimant/owner.

20. Section 3833.1–5 is added to read as follows:

§ 3833.1–5 Rental fees.

Except as provided in §§ 3833.0–3(f) and 3833.1–6, each claimant shall pay a nonrefundable rental fee of $100.00 for each mining claim, mill site, or tunnel site to the proper BLM office for each specified assessment year for which the claimant desires to hold the mining claim, mill site, or tunnel site. Claimants who completed assessment work during the period from September 1, 1992, through October 4, 1992, shall pay the rental fee for the year ending September 1, 1993. The assessment years specified in the Act of October 5, 1992, begin on September 1, 1992, and September 1, 1993. The $100 rental fee requirement does not apply to oil shale claims. Instead, oil shale claim holders shall pay an annual $550 fee for each oil shale claim as described in section 2511 of the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776).

(a) *Mining claim or site located on or after October 6, 1992, and on or before September 30, 1994.* The $100.00 nonrefundable rental fee, for the assessment year in which the mining claim or site was located, shall be paid for each mining claim, mill site, or tunnel site at the time of recording of the mining claim, mill site, or tunnel site pursuant to section 314(b) of FLPMA and § 3833.1–2 in addition to the service charge required by § 3833.1–4(a).

(1) For all mining claims, mill sites, or tunnel sites located on or before August 31, 1993, and for which the notice of location is filed in a timely manner pursuant to section 314(b) of FLPMA before August 31, 1993, the $100 rental fee for the assessment year beginning on September 1, 1993, shall be paid on or before August 31, 1993. At the time of payment, the claimant/owner shall submit a list of claim names and BLM serial numbers assigned to each mining claim or site for which the rental fee is being paid. The list shall state the assessment year to which the payment applies.

(2) For all mining claims, mill sites, or tunnel sites located within the assessment year beginning September 1, 1992, and for which the notice of location is filed in a timely manner in the proper BLM Office pursuant to section 314(b) of FLPMA and § 3833.1–2 after August 31, 1993, the $100 rental fee for the assessment year beginning September 1, 1993, shall be paid at the time of filing in addition to the requirements of paragraph (a) of this section and the service charge required by § 3833.1–4(a).

(3) For all mining claims, mill sites, or tunnel sites located and recorded on or after September 1, 1993, the $100 rental fee for the assessment year beginning on September 1, 1993, shall be paid at the time of recording in addition to the service charge required by § 3833.1–4(a).

(4) If the mining claim, mill site, or tunnel site is located during the period beginning at noon on September 1, 1994, and ending on September 30, 1994, and is recorded in a timely manner pursuant to section 314(b) of FLPMA and § 3833.1–2, and the date of timely recording is on or after October 1, 1994, the rental fee is required at the time of recording.

(b) *Mining claim or site located on or before October 5, 1992.* A nonrefundable rental fee of $100.00 for each mining claim, mill site, or tunnel site, shall be paid on or before August 31, 1993, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental fee of $200. At the time of payment, the claimant/owner shall submit a list of claim names and BLM serial numbers assigned to each mining claim or site for which the rental fee is being paid. The list shall state the assessment years to which the payment applies.

(c) There will be no proration of rental fees for partial years of holding of mining claims, mill sites, or tunnel sites.

(d) A small miner may, under certain conditions described in §§ 3833.1–6 and 3833.1–7, perform assessment work and file the affidavit of labor pursuant to § 3833.2 in lieu of paying the rental fee.

(e) A small miner may elect to file for an exemption in one of the two years covered by the law and pay the rental fee for the other year.

(f) The owner of an oil shale claim shall pay the required $550 rental fee to the proper BLM office on or before December 31, 1993, and each December 31st thereafter.

(g) The payment of the required rental fee for a mining claim, mill site, or tunnel site satisfies the requirement to file a notice of intent to hold pursuant to § 3833.2.

21. Section 3833.1–6 is added to read as follows:

§ 3833.1–6 Rental fee exemption qualifications.

A small miner may, under certain conditions described in this section and in § 3833.1–7, perform the assessment work required under 30 U.S.C. 28–28e and record it pursuant to section 314(a) of FLPMA and § 3833.2 in lieu of paying the rental fee. Assessment work shall be of the nature described in paragraph (b) of this section.

(a) In order to qualify for an exemption from the rental fee requirements, a small miner shall meet all the following conditions:

(1) The claimant shall hold 10 or fewer mining claims, mill sites, and tunnel sites, on Federal lands in the United States. For purposes of determining the small miner exemption, oil shale claims will not be counted toward the 10-claim limitation for the small miner exemption to the $100 rental fee. A claimant who owns 10 or fewer claims, mill sites, and tunnel sites, and otherwise meets the requirements of this section, is not precluded from paying the rental fee in addition to filing for a small miner exemption.

(2) Mining claims held by a husband and wife, either jointly or individually, or their children under the age of discretion, shall be counted toward the 10-claim limit.

(3) Mining claims held in co-ownership, or by an association of locators, by a partnership, or by a corporation shall be counted toward the 10-claim limit for claimants that have an interest in these entities.

(4) The mining claims shall be under:

(i) One or more Notices or approved Plans of Operations pursuant to subparts 3802 or 3809 of this title; or

(ii) A Plan of Operations issued under parts 9 and 228 of Title 36 of the Code of Federal Regulations for National Park System lands and National Forest System lands respectively; or

(iii) A special use permit issued by a Federal agency for the mining or removal of locatable minerals; or

(iv) A State or local authority mining or reclamation permit if the surface estate of the mining claim is not in Federal ownership.

(5) The mining claims shall collectively have less than 10 acres of unreclaimed surface disturbance remaining that is caused by mining or exploration operations covered by the Notice(s) or approved Plan(s) of Operation, special use permit, or State or local mining or reclamation permit since January 1, 1981.

(6) The mining claims shall collectively either be producing or shall be under active exploration, as follows:

(i) The claimant shall be producing from the 10 or fewer collective mining claims no less than $1,500.000 and no more than $800,000.00 in gross revenues per year; or

(ii) The claimant shall be actively and diligently performing exploration work on the 10 or fewer claims to disclose, expose, or otherwise make known possible valuable mineralization.

(b) To qualify for the exploration exemption, the work shall be of a physical nature performed on or for the

benefit of the claims, and of a nature that would require a notice or plan of operations and lead to the development of the mineral property for mining purposes. Examples of qualifying exploration work include, but are not limited to, drilling, excavations, sampling (geochemical or bulk), road construction for development of the property, and ground geophysical work that requires a plan of operations, a notice, or a permit as specified in paragraph (a)(4) of this section.

22. Section 3833.1–7 is added to read as follows:

§ 3833.1–7 Filing requirements for rental fee exemptions.

(a) The affidavit of assessment work performed by a small miner claiming a rental fee exemption shall be filed with the proper State Office of the BLM pursuant to § 3833.2 and meet the requirements of § 3833.2–4.

(b) For mining claims located on or before October 5, 1992, to claim the small miner's exemption, the following requirements shall be met.

(1) *For the assessment year beginning September 1, 1992.* The affidavit of assessment work for the period of September 1, 1992, through September 1, 1993, shall be filed on or before December 30, 1993, in the proper State Office of the BLM. The certified statement required by paragraph (d) of this section shall be filed in the proper State Office of the BLM on or before August 31, 1993, and shall contain all of the information required in paragraph (d) of this section.

(2) *For the assessment year beginning September 1, 1993.* The affidavit of assessment work for the period of September 1, 1993, through September 1, 1994, shall be filed on or before December 30, 1994, in the proper State Office of the BLM. The certified statement required by paragraph (d) of this section shall be filed on or before August 31, 1993, and shall contain all of the information required in paragraph (d) of this section.

(c) For mining claims located on or before October 6, 1992, and before September 1, 1993, to claim the small miner's exemption for the year beginning September 1, 1993, the affidavit of assessment work for the period of September 1, 1993, through September 1, 1994, shall be filed on or before December 30, 1994, in the proper State Office of the BLM. The certified statement required by paragraph (d) of this section shall be filed in the proper State Office of the BLM on or before August 31, 1993, and shall contain all of the information required in paragraph (d) of this section. For exempt mining claims located on or after October 6, 1992, and on or before December 31, 1992, the filing of the certified statement in paragraph (d) of this section shall satisfy the requirements for filing or notice of intent to hold pursuant to § 3833.2–5.

(d) The small miner shall file a separate statement on or before August 31, 1993, supporting the claimed exemption for each assessment year a small miner's exemption is claimed (for the year ending September 1, 1993, the assessment affidavit required by FLPMA continues to be due on December 30, 1993; and for the year ending September 1, 1994, the assessment filing is due on December 30, 1994), certified to under penalty of 18 U.S.C. 1001. The certified statement shall contain:

(1) The serial number(s) or other designation(s) assigned by the Federal land management agency to the Notice(s), Plan(s) of Operations, special use permits, or the number(s) assigned by the State or local agency issuing mining or reclamation permits covering the mining claim or claims for which the exemption is sought.

(2) The claim names and BLM serial numbers assigned to the mining claims held by the small miner.

(3) A declaration that the exemption for the given assessment year that has been or is being claimed by the claimant, claimant's spouse, or children of claimant under the age of discretion, or the association of locators, or the partnership of locators, or the corporation, for the given assessment year does not exceed 10 claims in total.

(4) A declaration that specifies the gross dollar revenues from the mineral commodities produced from the beginning of the assessment year by commodity, that were produced from the claimant's claims in total, which are by law required to be 10 or fewer in number, or describes the level of exploration being performed to disclose, expose, or otherwise make known possible valuable mineralization.

(i) For the assessment year ending September 1, 1993, the gross dollar revenues shall be calculated for the period beginning on September 1, 1991, and ending on September 1, 1992.

(ii) For the assessment year ending September 1, 1994, the gross dollar revenues shall be calculated for the period beginning on September 1, 1992, and ending on September 1, 1993.

(5) A declaration that specifies that the assessment work requirements have been or will be completed as follows:

(i) For the assessment year ending September 1, 1993, the declaration shall state that the assessment work was completed in that year.

(ii) For the assessment year ending September 1, 1994, the declaration shall state that the assessment work will be completed in that year.

(6) A declaration that the mining claims collectively have less than a total of 10 acres of unreclaimed surface disturbance remaining that is caused by the mining or exploration operation covered by the Notice(s) or approved Plan(s) of Operations, special use permit, or State or local mining or reclamation permit.

(7) All the owners of the mining claim(s) for which an exemption is claimed shall sign the certified statement.

(8) The certified statement shall be notarized.

(e) Mining claims covered by a deferment of assessment work granted by the authorized officer pursuant to 30 U.S.C. 28(b)–(e) and subpart 3852 of this title are exempt from the payment of the rental fee for the assessment period(s) during which the deferment is granted. The rental fee will be required to be paid by August 31, 1993, if the deferment expires on or before that date. The rental fee will be required to be paid within 30 days after the date the deferment expires if the expiration occurs on or after September 1, 1993, and on or before September 1, 1994. The claimant shall file evidence of a valid deferment on or before August 31, 1993, with the proper BLM office in the assessment year for which the deferment has been granted. The evidence shall include a list of mining claim names and serial numbers for which the deferment exemption is sought. Deferment exemptions are governed by the following conditions:

(1) If a petition for a deferment of assessment work, as required by § 3852.2 of this title, is filed with the proper BLM office on or before August 31, 1993, for the assessment year beginning on September 1, 1992, the rental fee need not be paid on the claims listed in the petition of deferment until the authorized officer has acted upon the petition.

(2) If the petition is granted, the claims are exempt from the rental fees for that assessment year. At the expiration of the deferment, if it occurs after September 1, 1994, all deferred assessment work shall be done as provided in § 3852.5 of this title.

(3) If the petition for deferment is denied by the authorized officer, the rental fees that were due on August 31, 1993, must be paid within 30 days of receipt of the decision of the authorized officer denying the petition for deferment. Failure to pay the rental fees owed shall cause the claims contained

within the petition to be declared abandoned and void.

(f) Mining claims for which an application for a mineral patent has been filed, and the mineral entry has been allowed by the authorized officer pursuant to 30 U.S.C. 29 and § 3862.4–6 and 3862.5 of this title, are exempt from the payment of the rental fee for the assessment years during which assessment work is not required pursuant to § 3851.5 of this title; however, no refund of previously deposited rental fees will be made to the mineral patent applicant.

(g) under the following circumstances, an exemption may be obtained from the payment of the rental fee for mining claims and sites located upon National Park System lands:

(1) The claimant has received a declaration of taking or a notice of intent to take from the National Park Service pursuant to sections 6 and 7 of the Act of September 28, 1976, as amended (16 U.S.C. 1905, 1906) or the Act of December 2, 1980, as amended (16 U.S.C. 3192); or the claimant has otherwise been denied access by the United States to his/her mining claims or sites on National Park Service lands.

(2) The claimant shall provide proof of the above conditions for exemption, filed as a certified statement, by August 31, 1993, with the proper BLM office.

23. Section 3833.2–1 is amended by adding in paragraph (a) after the date "1977," the phrase "except as provided under the Act of October 5, 1992," and by revising paragraph (e) to read as follows:

§ 3833.2–1 National Park System lands.

* * * * *

(e) The authorized officer will forward copies of annual filings on, and will periodically provide the status of, mining claims, mill sites, and tunnel sites located within a unit of the National Park System to the proper National Park Service office.

§ 3833.2–2 [Amended]

24. Section 3833.2–2 is amended by adding in the introductory paragraph after the word "System" the phrase, "except as provided in §§ 3833.1–5 through 3833.1–7,".

25. Section 3833.2–3 is amended by revising the section heading and adding new paragraphs (d) and (e) to read as follows:

§ 3833.2–3 Consistency between the Federal Land Policy and Management Act, the General Mining Law of May 10, 1872, and the Act of October 5, 1992.

* * * * *

(d) The Act of October 5, 1992, will not affect the requirements to do assessment work in the assessment year beginning on September 1, 1994, and ending on September 1, 1995, or to make annual filings on or before December 30, 1995, pursuant to §§ 3833.2 and 3851.1.

(e) For mining claims and sites located on or after September 1, 1994, and on or before September 30, 1994, and for which the required $100 rental fee was paid at the time of recording pursuant to section 314(b) of FLPMA and § 3833.1–2, payment of the rental fee satisfies the requirements of § 3833.2 for the 1995 year.

26. Section 3833.3 is amended by adding paragraph (a)(3) to read as follows:

§ 3833.3 Notice of transfer of interest.

(a) * * *

(3) A copy of the legal instrument or document that operates under State law to transfer the interest in the claim being sold, assigned, or otherwise transferred.

* * * * *

27. Section 3833.4 is amended by revising the section heading, paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 3833.4 Failure to file or pay rental fee.

(a)(1) The failure to make annual filings required by §§ 3833.2–1 and 3833.2–2 on or before December 30, 1992, shall conclusively constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void. The failure to make annual filings required by §§ 3833.2–1 and 3833.2–2 on or before December 30, 1995, and within the time periods prescribed therein after that date, shall conclusively constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void. For mining claims located on or after September 1, 1994, and on or before September 30, 1994, and for which the required rental fee was paid at the time of recording, the failure to make annual fillings required by §§ 3833.2–1 and 3833.2–2 on or before December 30, 1996, and within the time prescribed therein after that date, shall conclusively constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void.

(i) Failure to file the affidavit of assessment work required by § 3833.1–7 (a), (b), and (c) in a timely manner, shall conclusively constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void.

(ii) Except for the filings required on or before December 30, 1992, effective October 5, 1992, the requirements of §§ 3833.2–1 through 3833.2–5 are modified by the requirements of the Act of October 5, 1992, and the Energy Policy Act, and administrated through §§ 3833.1–5, 3833.1–6, and 3833.1–7.

(2) Failure to file the notice or certificate of location required by § 3833.1–2(a), § 3734.1(a), or § 3821.2 of this title, or to pay the rental fee required by § 3833.1–5, or file the documents required by § 3833.1–7 (a), (b), or (c) within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void.

(b) Unintentional failure to file the complete information required in §§ 3833.1–2(b), 3833.1–7 (d) and (e), 3833.2–4 (a), 3833.2–4(b), 3833.2–5(c), and 3833.3, when the document is otherwise filed on time, shall not be deemed conclusively to constitute an abandonment of the claim or site, but such information shall be filed within 30 days of receipt of a notice from the authorized officer calling for such information. * * *

* * * * *

28. Section 3833.5 is amended by revising paragraph (b) and the first and last sentences of paragraphs (d) to read as follows:

§ 3833.5 Effect of recording and filing.

* * * * *

(b) Compliance with the requirements of this subpart shall be in addition to and not a substitute for compliance with the other requirements of Groups 3700 and 3800 of this title, and with laws and regulations issued by any State or other authority relating to locating, recording, and maintenance of mining claims, mill sites, and tunnel sites located, held, and maintained upon the public lands of the United States.

* * * * *

(d) In the case of any action or contest initiated by the United States affecting an unpatented mining claim, mill, or tunnel site, only those owners who have recorded their claim or site pursuant to § 3833.1–2 and filed a notice of transfer of interest pursuant to § 3833.3 shall be considered by the United States as parties whose rights are affected by such action or contest and shall be personally notified and served by certified mail sent to their last address of record. * * * The provisions of this subpart shall not be applicable to procedures for public notice required under part 3860 of this title with respect to mineral patent applications.

* * * * *

PART 3850—ASSESSMENT WORK

29. The authority citation for part 3850 is revised to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 30 U.S.C. 28–28(e); and 106 Stat. 1374, 1378–1379.

30. Section 3850.0–1 is added to read as follows:

§ 3850.0–1 Purpose.

The purpose of this part is to recite the requirements of the General Mining Law of 1872, as amended, for the performance of assessment work; to identify the methods provided by statute for qualifying assessment work; to provide for the deferment or suspension of assessment work under certain conditions; and to advise the claimant of the consequences of failing to perform the work.

31. Section 3850.0–9 is added to read as follows:

§ 3850.0–9 Information collection.

(a) The collections of information contained in part 3850 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0104 and subsequently consolidated with 1004–0114. The information will be used to allow the BLM to process petitions for the deferment of assessment work, determine if the assessment work required by statute (30 U.S.C. 28–28(e)) was indeed performed, and to determine the ownership of a mining claim or site in cases of delinquency of co-owners under 30 U.S.C. 28. A response is required to obtain a benefit in accordance with Section 2324 of the Revised Statutes, as amended (30 U.S.C. 28–28(e)) and 43 CFR part 3850.

(b) Public reporting burden for this information is estimated to average 8 minutes per response, including time for reviewing instructions, searching existing records, gathering and maintaining the data collected, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden; to the Information Collection Clearance Officer (783), Bureau of Land Management, 1849 C St., NW., Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project, 1004–0114, Washington, DC 20503.

Subpart 3851—Assessment Work: General

32. Section 3851.1 is revised to read as follows.

§ 3851.1 Assessment work requirements.

(a) The assessment year begins at 12 o'clock noon on September 1st and ends at 12 o'clock noon on the following September 1st.

(b) All lode and placer mining claimants shall have performed, or caused to have been performed, not less than $100 of labor or improvements upon each lode or placer claim held by the claimant for each assessment year following the assessment year of the lode or placer claim's location.

(c) Where a group of lode or placer claims are held in common, and cover the same mineral deposit, the assessment work may be performed on one or several claims of the group, as long as the aggregate expenditure totals not less than $100 per claim, and the work performed or improvements made will benefit the development of the claim block as a whole.

§ 3851.1–1 [Removed]

33. Section 3851.1–1 is removed.

34. Section 3851.3 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 3851.3 Effect of failure to perform assessment work.

* * * * *

(b) Except as provided in § 3851.5 and subpart 3852, failure to perform the assessment work required under § 3851.1 causes the interest of the claimant(s) in the minerals subject to the mining laws to revert back to the public domain.

(c) The Act of October 5, 1992, with certain exceptions for small miners, temporarily suspends and supersedes the requirements to perform assessment work under § 3851.1, and requires the payment of a $100 rental fee per mining claim or site in lieu of the assessment work. For oil shale claims, the Energy Policy Act of 1992 suspends and supersedes the requirement to perform assessment work under § 3851.1, and requires the payment of an annual $550 rental fee per oil shale mining claim in lieu of the assessment work. The rental fee requirements and exemptions from payment of the rental fee are described in §§ 3833.0–3(f), 3833.1–5, 3833.1–6, and 3833.1–7 of this title.

35. Section 3851.4 is amended by revising the section heading and the first sentence of the section to read as follows:

§ 3851.4 Failure of a co-owner to contribute to annual assessment work or to the payment of rental fees.

Upon the failure of any one of several co-owners to contribute his proportion of the required expenditures, the co-owners, who have performed the labor, where required, paid the rental fee required under § 3833.1–5 of this title, or made the improvements as required, may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days; and if upon the expiration of 90 days after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid. * * *

36. Section 3851.5 is revised to read as follows:

§ 3851.5 Assessment work not required after allowance of mineral entry.

Performance of annual assessment work is not required after the date that the mineral entry has been allowed by the authorized officer pursuant to 30 U.S.C. 29 and § 3862.5 of this title.

(a) The assessment year in which the mineral entry is allowed is the first assessment year for which the assessment work is no longer required, and assessment work is not required in any assessment year thereafter if a mineral patent issues. If the mineral entry is canceled by the authorized officer, either in whole or in part, on or before September 30, 1994, assessment work by qualified small miners is required in order to maintain the claim, and the rental fees shall be paid by claimants who do not qualify as small miners. After September 30, 1994, assessment work by all claimants is required, except for those who locate between September 1, 1994, and September 30, 1994, who are not required to file an assessment affidavit in 1995.

(b) If a mineral entry is canceled in whole or in part, the mining claims and mill sites that are no longer covered by the mineral entry shall be subject to the assessment work requirement, or the payment of rental fees, beginning in the assessment year next following the assessment year that the mineral entry was canceled.

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Thursday
July 15, 1993

Part IV

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1191

Department of Transportation

Office of the Secretary

49 CFR Part 37

Americans With Disabilities Act Accessibility Guidelines; Accessible Automated Teller Machines and Fare Vending Machines; Joint Final Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 92–1]

RIN 3014–AA14

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

[Docket 48463; Notice 92–22]

RIN 2105–AB97

Americans With Disabilities Act Accessibility Guidelines; Accessible Automated Teller Machines and Fare Vending Machines

AGENCIES: Architectural and Transportation Barriers Compliance Board and Department of Transportation.

ACTION: Joint final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) and the Department of Transportation are issuing a final rule amending the reach range requirement for automated teller machines and fare vending machines under the Americans With Disabilities Act Accessibility Guidelines (ADAAG). The rule sets out the reach ranges for controls when a person using a wheelchair can make a forward approach only, a parallel approach only, or both a forward and parallel approach to a machine. The rule includes a table of reach depths and maximum heights for the placement of controls where the controls are recessed or the installation of a surround in front of the machine results in a reach depth of more than 10 inches to any control from a parallel approach.

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Access Board: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Telephone (202) 272–5434 (voice) or (202) 272–5449 (TDD).

Department of Transportation: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street SW., room 10424, Washington, DC 20590. Telephone (202) 366–9306 (voice) or (202) 755–7687 (TDD).

The telephone numbers listed above are not toll-free numbers.

This document is available in alternate formats (cassette tape, braille, large print, or computer disc) from the Access Board upon request.

SUPPLEMENTARY INFORMATION:

Background

Under the Americans with Disabilities Act of 1990 (ADA), the Access Board is responsible for issuing guidelines to assist the Department of Justice and the Department of Transportation in establishing accessibility standards for newly constructed and altered buildings and facilities covered by the Act.[1] The Access Board issued the Americans with Disabilities Act Accessibility Guidelines (ADAAG) in 1991. See 36 CFR part 1191, appendix. The Department of Justice and the Department of Transportation adopted ADAAG as the accessibility standards for newly constructed and altered buildings in regulations implementing certain titles of the ADA. See 28 CFR part 36, appendix A; 49 CFR part 37, appendix A.

As originally adopted, ADAAG requires that accessible automated teller machines (ATMs) provide "both a forward and side reach to the unit allowing a person in a wheelchair to access the controls and dispensers."[2] See ADAAG 4.34.3. The provision was intended primarily to address the fact that the controls on ATMs are typically recessed or set back into the wall or the unit for privacy and security purposes. The installation of fixtures called "surrounds" in front of ATMs, which contain writing counters and bins for envelopes and waste paper, create a further obstruction that increases the reach depth to the controls.

In February 1992, two leading ATM manufacturers, NCR Corporation and InterBold, filed a petition for rulemaking with the Access Board claiming that their new ATMs cannot comply with "both a forward and side reach" and requested that ADAAG be amended to permit "either a forward or side reach." The American Bankers Association joined in the petition and raised questions regarding the effect that both a forward and side reach requirement would have on other user groups, especially persons with vision impairments, persons who have difficulty bending or stooping, and elderly persons.

The Access Board requested public comments on the matter and held a public hearing in May 1992. See 57 FR 19472 (May 6, 1992). An ATM surround manufacturer, Companion Systems, recommended that ADAAG include a table of reach depths and maximum heights for controls based on a straight line interpolation connecting the points between the maximum side reach with and without an obstruction from a parallel approach to address the increased reach depth resulting from recessed controls and the installation of surrounds in front of ATMs. In September 1992, the Access Board issued a notice of proposed rulemaking (NPRM) to amend the reach range requirement for ATMs by including such a table in ADAAG in place of requiring "both a forward and side reach" to the controls. See 57 FR 41006 (September 8, 1992).

The Department of Transportation issued a NPRM in November 1992 to amend its ADA regulations in several respects, including conforming the standards for transportation facilities to incorporate the proposed amendment to the reach range requirement for ATMs. See 57 FR 54210 (November 17, 1992). The amendment is relevant to transportation facilities because fare vending machines are required to comply with the same requirements as ATMs. See ADAAG 10.3.1(7).

The Department of Justice also issued a NPRM in April 1993 to amend its regulations on nondiscrimination on the basis of disability by public accommodations and in commercial facilities covered by title III of ADA (28 CFR part 36) to incorporate the proposed amendment to the reach range requirement for ATMs. See 58 FR 17558 (April 5, 1993). The Department of

[1] The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act of 1973, as amended, whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of whom are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The Departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; General Services Administration; and United States Postal Service.

[2] The dimensions for a forward and side reach for wheelchair users are contained in ADAAG 4.2.5 and 4.2.6 and are taken from the "American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by Physically Handicapped People" (ANSI A117.1–1980). The maximum forward reach permitted is 48 inches above the floor. See ADAAG 4.2.5 and Figure 5(a). If the forward reach is over an obstruction, clear floor space must be provided under the obstruction that equals or exceeds the reach depth for a maximum of 25 inches; and if the reach depth is between 20 inches and 25 inches, the maximum forward reach permitted is 44 inches above the floor. See ADAAG 4.2.5 and Figure 5(b). The maximum side reach permitted is 54 inches above the floor for a maximum reach depth of 10 inches. See ADAAG 4.2.6 and Figure 6(b). If the side reach is over an obstruction, the maximum side reach permitted is 46 inches. See ADAAG 4.2.6 and Figure 6(c).

Justice will issue a separate final rule notice in the Federal Register regarding the amendment of its regulations.

Summary of Rule and Comments

The Access Board and the Department of Transportation are adopting as a final rule the proposed amendment to the reach range requirement for ATMs and fare vending machines.[3] The technical provisions in ADAAG 4.34 are reorganized to more clearly set out the clear floor space and reach range requirements. The scoping provisions in ADAAG 4.1.3 (20) for buildings and facilities in general, and in ADAAG 10.3.1 (7) for transportation facilities in particular, are also revised to correctly reference the reorganized technical provisions in ADAAG 4.34.

ADAAG 4.34.1 provides that each ATM required to be accessible by the scoping provision in ADAAG 4.1.3 (20) must be on an accessible route and comply with the other requirements in ADAAG 4.34.2 through 4.34.5. ADAAG 10.3.1 (7) provides for fare vending machines in transportation facilities also to be on an accessible route and to comply with ADAAG 4.34.2 through 4.34.5.

ADAAG 4.34.2 requires that ATMs be located so that clear floor space complying with ADAAG 4.2.4 (i.e., 30 inches by 48 inches minimum with one full unobstructed side adjoining or overlapping an accessible route) is provided to allow a wheelchair user to make a forward approach, a parallel approach, or both to the machine.[4] Since ATMs are usually located in the lobby of buildings or installed through the exterior wall of buildings, there is generally adequate clear floor space for a wheelchair user to make a forward or parallel approach.

ADAAG 4.34.3 sets out the reach ranges for the various controls used to operate an ATM, including card readers, keypads, video display screen function keys, deposit slots, cash and receipt dispensers, and statement printers. ADAAG 4.34.3 (1) provides that if only a forward approach is possible (e.g., ATM located in narrow alcove), the operable parts of all the controls must be placed within the forward reach range specified in ADAAG 4.2.5 (i.e., 48 inches maximum height for a reach depth up to 20 inches and 44 inches maximum height for a reach depth between 20 inches and 25 inches; and clear floor space provided under the ATM that equals or exceeds the reach depth for a maximum of 25 inches).

ADAAG 4.34.3 (2)(a) and (b) specify the reach ranges if only a parallel approach is possible (e.g., ATM located in narrow corridor). Where the reach depth to the operable parts of all controls is not more than 10 inches, the maximum height for the placement of controls is 54 inches. Where the reach depth to the operable parts of any control is more than 10 inches, the table of reach depths and maximum heights in ADAAG 4.34.3 (2)(b) is to be used. Generally, for each additional inch of reach depth beyond 10 inches, the height of the controls would be lowered one-half inch below the 54 inch maximum height, with the controls being lowered an additional one-half inch at reach depths greater than 13 inches and 20 inches due to rounding-off numbers.

ADAAG 4.34.3 (3) provides that if both types of approaches are possible, the operable parts of all controls must be placed within at least one of the reach ranges in ADAAG 4.34.3 (1) or (2). Thus, if there is adequate clear floor space for a wheelchair user to make a forward or parallel approach, at a minimum the controls must be reachable from at least one of the approaches.

ADAAG 4.34.3 (4) requires that where bins are provided for envelopes, waste paper, or other purposes, at least one of each type provided must comply with the applicable reach ranges.

ADAAG 4.34.3 also contains an exception for ATMs which are equipped with an alternate control that can perform that same function in a substantially equivalent manner. Under the exception, only one of the controls needed to perform the function is required to comply with the reach range requirement. If the controls are identified by tactile markings, such markings must be provided at both controls so that the markings can be read by persons with vision impairments from a standing or sitting position.

ADAAG 4.34.4 regarding the operation of controls and ADAAG 4.34.5 regarding equipment for persons with vision impairments are unchanged from existing ADAAG. Only the section numbers have been changed as a result of the amendments discussed above.

NCR Corporation, InterBold, and the banking industry supported the proposed amendment to the reach range requirement.[5] The amendment will allow banks to choose among available ATM models and surround designs and, based upon their combined reach depth, install the ATM and surround so that the controls are placed at the appropriate height. The amendment also provides flexibility for banks when relocating older ATMs to lower traffic areas and will ensure that the market for used ATMs remains available.

Organizations representing individuals with disabilities expressed concern that the forward and side reach range requirements do not accommodate all wheelchair users and recommended that the Board conduct additional research in this area. For a summary of earlier research, see 57 FR 41012 (September 8, 1992). Some recommended that ADAAG not be amended until additional research is conducted. Others noted that additional research is also needed on equipment for persons with vision impairments, mounting heights for video display screens and related issues, and recommended that ATM manufacturers not be required to redesign their products to meet one requirement and then have to redesign their products again to meet another set of requirements. Rather, they recommended that accessibility requirements for ATMs be imposed on the industry as a "package" so that any required changes can be incorporated in a single redesign. Congress has expressed similar concern and has recommended that "when considering accessibility requirements for automated teller machines (ATMs) under the ADA, to take into account the fact that these sophisticated electronic systems are more difficult to modify and design than other vending machines because of their reliance on computers and their special security considerations." H. Rept. 102–918, at 34.

The Little People of America also commented on the amendment. According to the Little People of America, there are over 1.5 million Americans who are short statured. Their adult height ranges from 2 feet 6 inches to 4 feet 10 inches. For many of these individuals, the controls on ATMs are completely out of their reach. The Little People of America recommended that ADAAG not be amended without

[3] The Department of Transportation will be issuing a separate notice in the Federal Register regarding the final action taken on the other amendments proposed to its ADA regulations in November 1992.

[4] For a parallel approach, the clear floor space is positioned with the longer dimension (48 inches) parallel and adjacent to the object to be reached. See ADAAG 4.2.4 and Figure 4(c). For a forward approach, the clear floor space is positioned with the shorter dimension (30 inches) parallel and adjacent to the object to be reached. See ADAAG 4.2.4 and Figure 4 (b). The various approaches are illustrated in the NPRM at 57 FR 41011, Figure 2 (September 8, 1992).

[5] The American Bankers Association, Independent Bankers Association of America, Savings and Community Bankers of America, Credit Union National Association, California Bankers Association, and about a dozen banks submitted comments in support of the amendments.

conducting additional research on making ATMs accessible to persons who are short statured. About 700 members and friends of the Little People of America sent letters reiterating these points.

The Access Board recognizes that any reach range requirement must take into account the needs of various user groups, including persons who use wheelchairs, persons who have difficulty bending or stooping, persons who are short statured, and persons with vision impairments who may read tactile markings identifying equipment controls. One way to accommodate these various groups is to require two of each type of equipment to be provided at each location, with one placed at a higher height and one placed at a lower height. Such a requirement would be very costly to implement for ATMs. Another way to accommodate these various groups is to provide technological alternatives for operating equipment that can be used by persons who are not accommodated by established reach ranges. NCR Corporation and InterBold reported that they are investigating several technological alternatives for operating ATMs, including remote devices, voice activation devices, and contactless cards.

In addition to reach ranges for controls, the Access Board requested comment on the viewing height and angle for video display screens. The NPRM noted that the American National Standards Institute (ANSI) A117 Committee and California have established or proposed accessibility provisions for video display screens. All the ATM manufacturers objected to the ANSI provision because it would require the screen to be positioned almost horizontally to be viewable from a standing position which would be difficult for a wheelchair user to read. The ATM manufacturers preferred the California provision because it addresses both viewing height and angle. InterBold stated that its ATMs comply with the California provision.

The ANSI A117 Committee has recently established a task force on ATMs to further examine a variety of issues related to making the machines readily accessible to and usable by persons with various disabilities. The Access Board is a member of the task force. The task force includes representatives from organizations of persons with mobility impairments and vision impairments, ATM manufacturers, and banks. The Little People of America have also been invited to participate in the task force. The task force will be investigating such issues as access for person with vision impairments, reach ranges, viewing height and angle of video display screens, and technological alternatives for addressing these issues.

The Access Board also plans to sponsor research in fiscal year 1994 on clear floor space, maneuvering clearances, and reach ranges for persons using power wheelchairs and three wheeled scooters. See the Access Board's notice on ADA research priorities for fiscal years 1993 and 1994 published in the **Federal Register** on July 9, 1993 (58 FR 37058). Persons using power wheelchairs are more likely to have a restricted reach range due to limited upper body mobility. The research project will also include a literature review on reach ranges focusing on the population that was tested in earlier studies and the extent to which those studies examined the manipulation of controls at different heights and reach depths. Based on the results of the literature review, the Access Board may sponsor additional research on reach ranges.

In light of the further work being done by the ATM task force sponsored by the ANSI A117 Committee and the additional research planned for fiscal year 1994, the Access Board does not intend to propose any additional requirements for ATMs at this time.

The Department of Transportation received several comments on the application of the proposed amended reach range requirement for ATMs to fare vending machines. Nine commenters supported the proposed amendment as applied to fare vending machines. Five commenters said that the purpose and design of fare vending machines were different enough from those of ATMs to warrant a separate provision, at least with respect to some specifications. One commenter said that, if the reach range requirement is amended, existing models of fare vending machines which it had installed should be grandfathered so that retrofit was not necessary. Several comments recommended that additional provisions such as a voice synthesizer system was needed on fare vending machines for persons with vision impairments.

The Access Board and the Department of Transportation believe that the proposed amended reach range requirement for ATMs is reasonable for fare vending machines as well. The operations which consumers must perform on ATMs and fare vending machines are similar enough that the same requirements should apply to both machines. Those commenters who said that the two types of machines should have different requirements did not provide sufficient information on which to base separate specifications. The Department of Transportation would apply the current "grandfathering" provisions in its ADA regulations (49 CFR 37.9) to fare vending machines that meet the existing ADAAG requirements in the same way as that section applies to other features of transportation facilities. As for provisions for persons with vision impairments, ADAAG 10.3.1(7) already requires compliance with ADAAG 4.34.5 which specifies that all instructions and information needed to use the machine must be accessible to and usable by persons with vision impairments. Specifying a voice synthesizer system for fare vending machines does not seem necessary and, in any event, is beyond the scope of the NPRM.

Regulatory Analyses and Notices

The Access Board and the Department of Transportation have independently determined that this final rule is not a major rule under Executive Order 12291. Accordingly, a regulatory impact analysis is not required. It is a significant rule under the Department of Transportation's Regulatory Policies and Procedures since it amends the agency's ADA regulations, which are a significant rule. The Department of Transportation expects the economic impacts to be minimal and has not prepared a full regulatory evaluation.

The Access Board and the Department of Transportation hereby independently certify that this final rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The Access Board and the Department of Transportation have also independently determined that there are no Federalism impacts sufficient to warrant the preparation of a Federalism assessment under Executive Order 12612.

Text of Final Common Rule

Appendix A to this part is amended by revising paragraph (20) in section 4.1.3, by revising sections 4.34 and 4.34.1 through 4.34.4, by adding section 4.34.5, and by revising paragraph (7) in section 10.3.1. Pages 10, 58, and 69 of appendix A are republished with the revisions included and page 58A of appendix A is added to read as follows:

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4.1.3 Accessible Buildings: New Construction

in a covered mall, at least one interior public text telephone shall be provided in the facility.

(iii) if a public pay telephone is located in or adjacent to a hospital emergency room, hospital recovery room, or hospital waiting room, one public text telephone shall be provided at each such location.

(d) Where a bank of telephones in the interior of a building consists of three or more public pay telephones, at least one public pay telephone in each such bank shall be equipped with a shelf and outlet in compliance with 4.31.9(2).

(18) If fixed or built-in seating or tables (including, but not limited to, study carrels and student laboratory stations), are provided in accessible public or common use areas, at least five percent (5%), but not less than one, of the fixed or built-in seating areas or tables shall comply with 4.32. An accessible route shall lead to and through such fixed or built-in seating areas, or tables.

(19)* Assembly areas:

(a) in places of assembly with fixed seating accessible wheelchair locations shall comply with 4.33.2, 4.33.3, and 4.33.4 and shall be provided consistent with the following table:

Capacity of Seating in Assembly Areas	Number of Required Wheelchair Locations
4 to 25	1
26 to 50	2
51 to 300	4
301 to 500	6
over 500	6, plus 1 additional space for each total seating capacity increase of 100

In addition, one percent, but not less than one, of all fixed seats shall be aisle seats with no armrests on the aisle side, or removable or folding armrests on the aisle side. Each such seat shall be identified by a sign or marker. Signage notifying patrons of the availability of such seats shall be posted at the ticket office. Aisle seats are not required to comply with 4.33.4.

(b) This paragraph applies to assembly areas where audible communications are integral to the use of the space (e.g., concert and lecture halls, playhouses and movie theaters, meeting rooms, etc.). Such assembly areas, if (1) they accommodate at least 50 persons, or if they have audio-amplification systems, and (2) they have fixed seating, shall have a permanently installed assistive listening system complying with 4.33. For other assembly areas, a permanently installed assistive listening system, or an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system shall be provided. The minimum number of receivers to be provided shall be equal to 4 percent of the total number of seats, but in no case less than two. Signage complying with applicable provisions of 4.30 shall be installed to notify patrons of the availability of a listening system.

(20) Where automated teller machines are provided, each machine shall comply with the requirements of 4.34 except where two or more machines are provided at a location, then only one must comply.

EXCEPTION: Drive-up-only automated teller machines are not required to comply with 4.34.2 and 4.34.3.

(21) Where dressing and fitting rooms are provided for use by the general public, patients, customers or employees, 5 percent, but never less than one, of dressing rooms for each type of use in each cluster of dressing rooms shall be accessible and shall comply with 4.35.

Examples of types of dressing rooms are those serving different genders or distinct and different functions as in different treatment or examination facilities.

4.1.4 (Reserved).

4.1.5 Accessible Buildings: Additions. Each addition to an existing building or facility shall be regarded as an alteration. Each space or element added to the existing building or facility shall comply with the applicable provisions of 4.1.1 to 4.1.3, Minimum Requirements (for New Construction) and the applicable technical specifications of 4.2 through 4.35 and sections 5 through 10. Each addition that

4.33.5 Access to Performing Areas. An accessible route shall connect wheelchair seating locations with performing areas, including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers.

4.33.6* Placement of Listening Systems. If the listening system provided serves individual fixed seats, then such seats shall be located within a 50 ft (15 m) viewing distance of the stage or playing area and shall have a complete view of the stage or playing area.

4.33.7* Types of Listening Systems. *Assistive listening systems (ALS) are intended to augment standard public address and audio systems by providing signals which can be received directly by persons with special receivers or their own hearing aids and which eliminate or filter background noise. The type of assistive listening system appropriate for a particular application depends on the characteristics of the setting, the nature of the program, and the intended audience. Magnetic induction loops, infra-red and radio frequency systems are types of listening systems which are appropriate for various applications.*

4.34 Automated Teller Machines.

4.34.1 General. *Each automated teller machine required to be accessible by 4.1.3 shall be on an accessible route and shall comply with 4.34.*

4.34.2 Clear Floor Space. *The automated teller machine shall be located so that clear floor space complying with 4.2.4 is provided to allow a person using a wheelchair to make a forward approach, a parallel approach, or both, to the machine.*

4.34.3 Reach Ranges.

(1) Forward Approach Only. If only a forward approach is possible, operable parts of all controls shall be placed within the forward reach range specified in 4.2.5.

(2) Parallel Approach Only. If only a parallel approach is possible, operable parts of controls shall be placed as follows:

(a) Reach Depth Not More Than 10 in (255 mm). Where the reach depth to the operable parts of all controls as measured from the vertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest protrusion of the automated teller machine or surround is not more than 10 in (255 mm), the maximum height above the finished floor or grade shall be 54 in (1370 mm).

(b) Reach Depth More Than 10 in (255 mm). Where the reach depth to the operable parts of any control as measured from the vertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest protrusion of the automated teller machine or surround is more than 10 in (255 mm), the maximum height above the finished floor or grade shall be as follows:

Reach Depth		*Maximum Height*	
In	*Mm*	*In*	*Mm*
10	*255*	*54*	*1370*
11	*280*	*53½*	*1360*
12	*305*	*53*	*1345*
13	*330*	*52½*	*1335*
14	*355*	*51½*	*1310*
15	*380*	*51*	*1295*
16	*405*	*50½*	*1285*
17	*430*	*50*	*1270*
18	*455*	*49½*	*1255*
19	*485*	*49*	*1245*
20	*510*	*48½*	*1230*
21	*535*	*47½*	*1205*
22	*560*	*47*	*1195*
23	*585*	*46½*	*1180*
24	*610*	*46*	*1170*

(3) Forward and Parallel Approach. If both a forward and parallel approach are possible, operable parts of controls shall be placed within at least one of the reach ranges in paragraphs (1) or (2) of this section.

(4) Bins. Where bins are provided for envelopes, waste paper, or other purposes, at least one of each type provided shall comply with the applicable reach ranges in paragraph (1), (2), or (3) of this section.

EXCEPTION: Where a function can be performed in a substantially equivalent manner by using an alternate control, only one of the controls needed to perform that function is required to comply with this section. If the controls are identified by tactile markings, such markings shall be provided on both controls.

4.34.4 Controls. *Controls for user activation shall comply with 4.27.4.*

4.34.5 Equipment for Persons with Vision Impairments. *Instructions and all information for use shall be made accessible to and independently usable by persons with vision impairments.*

4.35 Dressing and Fitting Rooms.

4.35.1 General. *Dressing and fitting rooms required to be accessible by 4.1 shall comply with 4.35 and shall be on an accessible route.*

4.35.2 Clear Floor Space. *A clear floor space allowing a person using a wheelchair to make a 180-degree turn shall be provided in every accessible dressing room entered through a swinging or sliding door. No door shall swing into any part of the turning space. Turning space shall not be required in a private dressing room entered through a curtained opening at least 32 in (815 mm) wide if clear floor space complying with section 4.2 renders the dressing room usable by a person using a wheelchair.*

4.35.3 Doors. *All doors to accessible dressing rooms shall be in compliance with section 4.13.*

4.35.4 Bench. *Every accessible dressing room shall have a 24 in by 48 in (610 mm by 1220 mm) bench fixed to the wall along the longer dimension. The bench shall be mounted 17 in to 19 in (430 mm to 485 mm) above the finish floor. Clear floor space shall be provided alongside the bench to allow a person using a wheelchair to make a parallel transfer onto the bench. The structural strength of the bench and attachments shall comply with 4.26.3. Where installed in conjunction with showers, swimming pools, or other wet locations, water shall not accumulate upon the surface of the bench and the bench shall have a slip-resistant surface.*

4.35.5 Mirror. *Where mirrors are provided in dressing rooms of the same use, then in an accessible dressing room, a full-length mirror, measuring at least 18 in wide by 54 in high (460 mm by 1370 mm), shall be mounted in a position affording a view to a person on the bench as well as to a person in a standing position.*

NOTE: Sections 4.1.1 through 4.1.7 and sections 5 through 10 are different from ANSI A117.1 in their entirety and are printed in standard type.

(7)* Automatic fare vending, collection and adjustment (e.g., add-fare) systems shall comply with 4.34.2, 4.34.3, 4.34.4, and 4.34.5. At each accessible entrance such devices shall be located on an accessible route. If self-service fare collection devices are provided for the use of the general public, at least one accessible device for entering, and at least one for exiting, unless one device serves both functions, shall be provided at each accessible point of entry or exit. Accessible fare collection devices shall have a minimum clear opening width of 32 inches; shall permit passage of a wheelchair; and, where provided, coin or card slots and controls necessary for operation shall comply with 4.27. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor and shall comply with 4.13. Where the circulation path does not coincide with that used by the general public, accessible fare collection systems shall be located at or adjacent to the accessible point of entry or exit.

(8) Platform edges bordering a drop-off and not protected by platform screens or guard rails shall have a detectable warning. Such detectable warnings shall comply with 4.29.2 and shall be 24 inches wide running the full length of the platform drop-off.

(9) In stations covered by this section, rail-to-platform height in new stations shall be coordinated with the floor height of new vehicles so that the vertical difference, measured when the vehicle is at rest, is within plus or minus 5/8 inch under normal passenger load conditions. For rapid rail, light rail, commuter rail, high speed rail, and intercity rail systems in new stations, the horizontal gap, measured when the new vehicle is at rest, shall be no greater than 3 inches. For slow moving automated guideway "people mover" transit systems, the horizontal gap in new stations shall be no greater than 1 inch.

EXCEPTION 1: Existing vehicles operating in new stations may have a vertical difference with respect to the new platform within plus or minus 1-1/2 inches.

EXCEPTION 2: In light rail, commuter rail and intercity rail systems where it is not operationally or structurally feasible to meet the horizontal gap or vertical difference requirements, mini-high platforms, car-borne or platform-mounted lifts, ramps or bridge plates, or similar manually deployed devices, meeting the applicable requirements of 36 CFR part 1192, or 49 CFR part 38 shall suffice.

(10) Stations shall not be designed or constructed so as to require persons with disabilities to board or alight from a vehicle at a location other than one used by the general public.

(11) Illumination levels in the areas where signage is located shall be uniform and shall minimize glare on signs. Lighting along circulation routes shall be of a type and configuration to provide uniform illumination.

(12) Text Telephones: The following shall be provided in accordance with 4.31.9:

(a) If an interior public pay telephone is provided in a transit facility (as defined by the Department of Transportation) at least one interior public text telephone shall be provided in the station.

(b) Where four or more public pay telephones serve a particular entrance to a rail station and at least one is in an interior location, at least one interior public text telephone shall be provided to serve that entrance. Compliance with this section constitutes compliance with section 4.1.3(17)(c).

(13) Where it is necessary to cross tracks to reach boarding platforms, the route surface shall be level and flush with the rail top at the outer edge and between the rails, except for a maximum 2-1/2 inch gap on the inner edge of each rail to permit passage of wheel flanges. Such crossings shall comply with 4.29.5. Where gap reduction is not practicable, an above-grade or below-grade accessible route shall be provided.

(14) Where public address systems are provided to convey information to the public in terminals, stations, or other fixed facilities, a means of conveying the same or equivalent information to persons with hearing loss or who are deaf shall be provided.

BILLING CODE 8150-01-C; 4910-62-C

Adoption of Joint Final Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Individuals with disabilities.

Authority and Issuance

For the reasons set forth in the common preamble, part 1191 of title 36 of the Code of Federal Regulations is amended as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR part 1191 is revised to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12204).

Appendix to Part 1191 [Redesignated as Appendix A]

2. The appendix to part 1191 is redesignated as appendix A to part 1191 and the heading is revised to read as follows:

Appendix A to Part 1191—Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

Appendix A [Amended]

3. Appendix A to part 1191 is amended as set forth at the end of the common preamble.

Authorized by vote of the Access Board on November 18, 1992.

Kathleen K. Parker,

Chairman, Architectural and Transportation Barriers Compliance Board.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

List of Subjects in 49 CFR Part 37

Buildings and facilities, Buses, Civil rights, Individuals with disabilities, Mass transportation, Railroads, Reporting and recordkeeping requirements, Transportation.

Authority and Issuance

For the reasons set forth in the common preamble, part 37 of title 49 of the Code of Federal Regulations is amended as follows:

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

1. The authority citation for 49 CFR part 37 continues to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

Appendix A [Amended]

2. Appendix A to part 37 is amended as set forth at the end of the common preamble.

Dated: June 30, 1993.

Federico Peña,

Secretary of Transportation.

[FR Doc. 93–16735 Filed 7–14–93; 8:45 am]

BILLING CODE 8150–01–P; 4910–62–P

federal register

Thursday
July 15, 1993

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 921
National Estuarine Research Reserve System Program Regulations; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 921

[Docket No. 910927–3012]

RIN 0648–AB68

National Estuarine Research Reserve System Program Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule revises the existing interim-final rule for selecting, designating, operating, and funding National Estuarine Research Reserves to bring them into accord with requirements of the Coastal Zone Act Reauthorization Amendments of 1990 (the Amendments). In addition, it adopts some of the revisions suggested by comments received on the interim-final rule dated July 23, 1990, and incorporates comments received on the proposed rule published on July 17, 1992 (57 FR 31926).

FOR FURTHER INFORMATION CONTACT: June Cradick at (301) 713–3132.

DATES: Effective July 14, 1993.

SUPPLEMENTARY INFORMATION:

I. Authority

This final rule is issued pursuant to the authority of section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461 (the Act). The National Estuarine Reserve Research System (the System) has been operating under interim-final regulations published July 23, 1990 (55 FR 29940).

II. Availability of Comments

All comments received in response to the notice of proposed rulemaking for this rule (57 FR 31926, July 17, 1992) are available for inspection at the Office of Ocean and Coastal Resource Management during normal business hours (8 a.m. to 4:30 p.m.) in room 12520, 1305 East-West Highway, Silver Spring, Maryland 20910.

III. Regulatory Issues

A. General Background

On July 23, 1990 (55 FR 29940) NOAA published interim-final regulations for continued implementation of the National Estuarine Reserve Research System Program pursuant to section 315 of the Act, 16 U.S.C. 1461. Written comments were accepted until September 21, 1990. On November 5, 1990, Public Law No. 101–508 was passed reauthorizing the Program. Several changes to the regulations are required as a result of the 1990 reauthorization. In addition, for the reasons stated below, some of the revisions suggested by the comments received on the interim-final rule have been adopted. A summary of the significant proposed changes to the interim-final regulations is presented below. On July 17, 1992, NOAA published a proposed rule incorporating revisions required by the Amendments and revisions suggested by public comments received on the interim-final rule. Two public comments on the proposed rule were received during the review period which ended on August 31, 1992. The public's comments and NOAA's response are set forth in Section VI, Summary of Public Comments and Responses.

B. Final Rule

These regulations establish the Program's mission and goals and revise the existing procedures for selecting, designating and operating National Estuarine Research Reserves.

1. Changing the Name of the Program

The name of the Program was changed from the National Estuarine Reserve Research System to the National Estuarine Research Reserve System by the Amendments. The revisions to the regulations revise the Program name accordingly when it appears in the regulations.

2. Revision of Match Requirements

The Amendments effectively reduce from 50% to 30% state, and where applicable, private party match requirements for the following financial assistance award types: Operations, research, monitoring, facility construction and education/interpretation. They also provide for 100% Federal support for educational-interpretive activities that benefit the entire System. Match requirements for site selection and land acquisition remain at 50%. The revisions make the regulations conform.

3. Definitions

The revisions add a definition for the term "state agency".

4. Increase in Acquisition Support

The Amendments increase the maximum amount of Federal financial assistance that can be awarded for the acquisition of land and waters, or interests therein, for any one National Estuarine Research Reserve from $4,000,000 to $5,000,000. The revisions make the regulations conform.

5. Change in Development Support

The regulations allow costs associated with the development of research, monitoring and education programs to be included as supplemental development costs and eliminate the ceiling of $1,500,000 on financial assistance which can be provided for development assistance directly associated with facility construction.

6. Simplification of Operational Support

The regulations reduce state and Federal paperwork burdens by combining support for routine monitoring and education activities with the annual non-competitive operations and management awards. Competitive awards for special monitoring, research and education projects continue as a separate activity.

7. Clarification of Site Selection

The regulations clarify the process to be followed by a coastal state which proposes to reactivate an inactive site previously approved by NOAA for development as an estuarine sanctuary or National Estuarine Research Reserve.

8. Resource Manipulation

The regulations recognize the possibility that in Reserve buffer areas long-term uses may have existed prior to designation which should be allowed to continue.

9. Performance Evaluation

The Amendments emphasize the importance of public participation in the performance evaluation process. They also establish interim sanctions, including partial or full withdrawal of financial assistance, and establish a process for instituting such sanctions. The revisions make the regulations conform.

IV. Summary of Comments on the Proposed Regulations and NOAA's Responses

NOAA received two comments on the proposed rule. A summary of those comments and NOAA's response appears below.

Comment: There is a need to recognize that manipulative uses occur within the core area of Reserves. Further, traditional uses is a more appropriate term to describe sport fishing and hunting, rather than manipulative uses.

Response: NOAA is aware that manipulative uses occur within core

areas of certain Reserves. However, given the purposes of the Program, NOAA believes that some of these activities are inappropriate to be carried out in core areas. In response to the commenters' concerns regarding the use of the term "manipulative uses", the regulations have been clarified to better explain the meaning of that term.

V. Other Actions Associated With the Rulemaking

[A] Classification Under Executive Order 12291. NOAA has concluded that these regulations are not major because they 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 government agencies; or geographic 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.

These rules amend existing procedures for identifying, designating, and managing national estuarine research reserves in accordance with the Coastal Zone Act Reauthorization Amendments of 1990. They will not result in any direct economic or environmental effects nor will they lead to any major indirect economic or environmental impacts.

[B] Regulatory Flexibility Act Analysis. A Regulatory Flexibility Analysis is not required for this rulemaking. The regulations set forth procedures for identifying and designating National Estuarine Research Reserves, and managing sites once designated. These rules do not directly affect "small government jurisdictions" as defined by Public Law No. 96–354, the Regulatory Flexibility Act, and the rules will have no effect on small businesses. Accordingly, when these regulations were proposed, the General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that these regulations, if adopted, would not have a significant economic impact on a substantial number of small entities.

[C] Paperwork Reduction Act of 1980. This rule contains collection of information requirements subject to Public Law 96–511, the Paperwork Reduction Act (PRA), which have already been approved by the Office of Management and Budget (approval number 0648–0121). Public reporting burden for the collections of information contained in this rule is estimated to average 2,012 hours per response for management plans and related documentation, 1.25 hours for performance reports, and 15 hours for annual reports and work plans. These estimates include 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 these collections of information, including suggestions for reducing this burden, to Richard Roberts, room 724, Department of Commerce, 6010 Executive Blvd., Rockville, Maryland 20852, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. ATTN: Desk Officer for NOAA.

[D] Executive Order 12612. This rule does not contain policies which have sufficient Federalism implications to warrant preparation of a Federalism Assessment pursuant to Executive Order 12612. However, the provisions of the rule setting forth what a state must do or agree to do in order to qualify for the various types of Federal assistance available under the rule has been reviewed to ensure that the rule grants the states the maximum administrative discretion possible in the administration of the National Estuarine Research Reserve System policies embodied in the qualification requirements. In formulating those policies, the NOAA worked with affected states to develop their own policies with respect to the use of National Estuarine Research Reserves. To the maximum extent possible consistent with the NOAA's responsibility to ensure that the objectives of the National Estuarine Research Reserve System provisions of the Coastal Zone Management Act are achieved, the rule refrains from establishing uniform national standards. Extensive consultations with state officials and organizations have been held regarding the financial assistance qualifications imposed. Details regarding awards of financial assistance have been discussed above under the heading "REVISION OF THE PROCEDURES FOR SELECTING, DESIGNATING AND OPERATING NATIONAL ESTUARINE RESEARCH RESERVES" and are not repeated here.

[E] National Environmental Policy Act. NOAA has concluded that publication of this final rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 921

Administrative practice and procedure, Coastal zone, Environmental impact statements, Grants programs, Natural resources, Reporting and recordkeeping requirements, Research. (Federal Domestic Assistance Catalog Number 11.420, National Estuarine Research Reserve Research System).

(Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Sanctuaries)

Dated: June 17, 1993.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

For the reasons set out in the preamble 15 CFR part 921 is revised to read as follows:

PART 921—NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM REGULATIONS

Subpart A—General

§ 921.1 Mission, goals and general provisions.
§ 921.2 Definitions.
§ 921.3 National Estuarine Research Reserve System biogeographic classification scheme and estuarine typologies.
§ 921.4 Relationship to other provisions of the Coastal Zone Management Act and the Marine Protection, Research and Sanctuaries Act.

Subpart B—Site Selection, Post Site Selection and Management Plan Development

§ 921.10 General.
§ 921.11 Site selection and feasibility.
§ 921.12 Post site selection.
§ 921.13 Management plan and environmental impact statement development.

Subpart C—Acquisition, Development, and Preparation of the Final Management Plan

§ 921.20 General.
§ 921.21 Initial acquisition and development awards.

Subpart D—Reserve Designation and Subsequent Operation

§ 921.30 Designation of National Estuarine Research Reserves.
§ 921.31 Supplemental acquisition and development awards.
§ 921.32 Operation and management: Implementation of the management plan.
§ 921.33 Boundary changes, amendments to the management plan, and addition of multiple-site components.

Subpart E—Ongoing Oversight, Performance Evaluation and Withdrawal of Designation

§ 921.40 Ongoing oversight and evaluations of designated National Estuarine Research Reserves.
§ 921.41 Withdrawal of designation.

Subpart F—Special Research Projects

§ 921.50 General.
§ 921.51 Estuarine research guidelines.
§ 921.52 Promotion and coordination of estuarine research.

Subpart G—Special Monitoring Projects

§ 921.60 General.

Subpart H—Special Interpretation and Education Projects

§ 921.70 General.

Subpart I—General Financial Assistance Provisions

§ 921.80 Application information.
§ 921.81 Allowable costs.
§ 921.82 Amendments to financial assistance awards.

Appendix I to Part 921—Biogeographic Classification Scheme

Appendix II to Part 921—Typology of National Estuarine Research Reserves

Authority: Section 315 of the Coastal Zone Management Act, as amended (16 U.S.C. 1461).

Subpart A—General

§ 921.1 Mission, goals and general provisions.

(a) The mission of the National Estuarine Research Reserve Program is the establishment and management, through Federal-state cooperation, of a national system (National Estuarine Research Reserve System or System) of estuarine research reserves (National Estuarine Research Reserves or Reserves) representative of the various regions and estuarine types in the United States. National Estuarine Research Reserves are established to provide opportunities for long-term research, education, and interpretation.

(b) The goals of the Program are to:

(1) Ensure a stable environment for research through long-term protection of National Estuarine Research Reserve resources;

(2) Address coastal management issues identified as significant through coordinated estuarine research within the System;

(3) Enhance public awareness and understanding of estuarine areas and provide suitable opportunities for public education and interpretation;

(4) Promote Federal, state, public and private use of one or more Reserves within the System when such entities conduct estuarine research; and

(5) Conduct and coordinate estuarine research within the System, gathering and making available information necessary for improved understanding and management of estuarine areas.

(c) National Estuarine Research Reserves shall be open to the public to the extent permitted under state and Federal law. Multiple uses are allowed to the degree compatible with each Reserve's overall purpose as provided in the management plan (see § 921.13) and consistent with paragraphs (a) and (b) of this section. Use levels are set by the state where the Reserve is located and analyzed in the management plan. The Reserve management plan shall describe the uses and establish priorities among these uses. The plan shall identify uses requiring a state permit, as well as areas where uses are encouraged or prohibited. Consistent with resource protection and research objectives, public access and use may be restricted to certain areas or components within a Reserve.

(d) Habitat manipulation for research purposes is allowed consistent with the following limitations. Manipulative research activities must be specified in the management plan, be consistent with the mission and goals of the program (see paragraphs (a) and (b) of this section) and the goals and objectives set forth in the Reserve's management plan, and be limited in nature and extent to the minimum manipulative activity necessary to accomplish the stated research objective. Manipulative research activities with a significant or long-term impact on Reserve resources require the prior approval of the state and the National Oceanic and Atmospheric Administration (NOAA). Manipulative research activities which can reasonably be expected to have a significant adverse impact on the estuarine resources and habitat of a Reserve, such that the activities themselves or their resulting short- and long-term consequences compromise the representative character and integrity of a Reserve, are prohibited. Habitat manipulation for resource management purposes is prohibited except as specifically approved by NOAA as: (1) A restoration activity consistent with paragraph (e) of this section; or (2) an activity necessary for the protection of public health or the preservation of other sensitive resources which have been listed or are eligible for protection under relevant Federal or state authority (*e.g.*, threatened/endangered species or significant historical or cultural resources) or if the manipulative activity is a long-term pre-existing use (*i.e.*, has occurred prior to designation) occurring in a buffer area. If habitat manipulation is determined to be necessary for the protection of public health, the preservation of sensitive resources, or if the manipulation is a long-term pre-existing use in a buffer area, then these activities shall be specified in the Reserve management plan in accordance with § 921.13(a)(10) and shall be limited to the reasonable alternative which has the least adverse and shortest term impact on the representative and ecological integrity of the Reserve.

(e) Under the Act an area may be designated as an estuarine Reserve only if the area is a representative estuarine ecosystem that is suitable for long-term research. Many estuarine areas have undergone some ecological change as a result of human activities (*e.g.*, hydrological changes, intentional/unintentional species composition changes—introduced and exotic species). In those areas proposed or designated as National Estuarine Research Reserves, such changes may have diminished the representative character and integrity of the site. Although restoration of degraded areas is not a primary purpose of the System, such activities may be permitted to improve the representative character and integrity of a Reserve. Restoration activities must be carefully planned and approved by NOAA through the Reserve management plan. Historical research may be necessary to determine the "natural" representative state of an estuarine area (*i.e.*, an estuarine ecosystem minimally affected by human activity or influence). Frequently, restoration of a degraded estuarine area will provide an excellent opportunity for management oriented research.

(f) NOAA may provide financial assistance to coastal states, not to exceed, per Reserve, 50 percent of all actual costs or $5 million whichever amount is less, to assist in the acquisition of land and waters, or interests therein. NOAA may provide financial assistance to coastal states not to exceed 70 percent of all actual costs for the management and operation of, the development and construction of facilities, and the conduct of educational or interpretive activities concerning Reserves (see subpart I). NOAA may provide financial assistance to any coastal state or public or private person, not to exceed 70 percent of all actual costs, to support research and monitoring within a Reserve. Predesignation, acquisition and development, operation and management, special research and monitoring, and special education and interpretation awards are available under the National Estuarine Reserve Program. Predesignation awards are for site selection/feasibility, draft management plan preparation and conduct of basic characterization studies. Acquisition and development awards are intended primarily for acquisition of interests in land, facility

construction and to develop and/or upgrade research, monitoring and education programs. Operation and management awards provide funds to assist in implementing, operating and managing the administrative, and basic research, monitoring and education programs, outlined in the Reserve management plan. Special research and monitoring awards provide funds to conduct estuarine research and monitoring projects with the System. Special educational and interpretive awards provide funds to conduct estuarine educational and interpretive projects within the System.

(g) Lands already in protected status managed by other Federal agencies, state or local governments, or private organizations may be included within National Estuarine Research Reserves only if the managing entity commits to long-term management consistent with paragraphs (d) and (e) of this section in the Reserve management plan. Federal lands already in protected status may not comprise a majority of the key land and water areas of a Reserve (see § 921.11(c)(3)).

(h) To assist the states in carrying out the Program's goals in an effective manner, NOAA will coordinate a research and education information exchange throughout the National Estuarine Research Reserve System. As part of this role, NOAA will ensure that information and ideas from one Reserve are made available to others in the System. The network will enable Reserves to exchange information and research data with each other, with universities engaged in estuarine research, and with Federal, state, and local agencies. NOAA's objective is a system-wide program of research and monitoring capable of addressing the management issues that affect long-term productivity of our Nation's estuaries.

§ 921.2 Definitions.

(a) *Act* means the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*

(b) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management or delegee.

(c) *Coastal state* means a state of the United States, in or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of these regulations the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas Islands, the Trust Territories of the Pacific Islands, and American Samoa (see 16 U.S.C. 1453(4)).

(d) *State agency* means an instrumentality of a coastal state to whom the coastal state has delegated the authority and responsibility for the creation and/or management/operation of a National Estuarine Research Reserve. Factors indicative of this authority may include the power to receive and expend funds on behalf of the Reserve, acquire and sell or convey real and personal property interests, adopt rules for the protection of the Reserve, enforce rules applicable to the Reserve, or develop and implement research and education programs for the reserve. For the purposes of these regulations, the terms "coastal state" and "State agency" shall be synonymous.

(e) *Estuary* means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term also includes estuary-type areas with measurable freshwater influence and having unimpaired connections with the open sea, and estuary-type areas of the Great Lakes and their connecting waters (see 16 U.S.C. 1453(7)).

(f) *National Estuarine Research Reserve* means an area that is a representative estuarine ecosystem suitable for long-term research, which may include all of the key land and water portion of an estuary, and adjacent transitional areas and uplands constituting to the extent feasible a natural unit, and which is set aside as a natural field laboratory to provide long-term opportunities for research, education, and interpretation on the ecological relationships within the area (see 16 U.S.C. 1453(8)) and meets the requirements of 16 U.S.C. 1461(b). This includes those areas designated as National Estuarine Sanctuaries or Reserves under section 315 of the Act prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990 and each area subsequently designated as a National Estuarine Research Reserve.

§ 921.3 National Estuarine Research Reserve System Biogeographic Classification Scheme and Estuarine Typologies.

(a) National Estuarine Research Reserves are chosen to reflect regional differences and to include a variety of ecosystem types. A biogeographic classification scheme based on regional variations in the nation's coastal zone has been developed. The biogeographic classification scheme is used to ensure that the National Estuarine Research Reserve System includes at least one site from each region. The estuarine typology system is utilized to ensure that sites in the System reflect the wide range of estuarine types within the United States.

(b) The biogeographic classification scheme, presented in appendix I, contains 29 regions. Figure 1 graphically depicts the biogeographic regions of the United States.

(c) The typology system is presented in appendix II.

§ 921.4 Relationship to other provisions of the Coastal Zone Management Act, and to the Marine Protection, Research and Sanctuaries Act.

(a) The National Estuarine Research Reserve System is intended to provide information to state agencies and other entities involved in addressing coastal management issues. Any coastal state, including those that do not have approved coastal management programs under section 306 of the Act, is eligible for an award under the National Estuarine Research Reserve Program (see § 921.2(c)).

(b) For purposes of consistency review by states with a federally approved coastal management program, the designation of a National Estuarine Research Reserve is deemed to be a Federal activity, which, if directly affecting the state's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved state coastal management program as provided by section 1456(c)(1) of the Act, and implementing regulations at 15 CFR part 930, subpart C. In accordance with section 1456(c)(1) of the Act and the applicable regulations NOAA will be responsible for certifying that designation of the Reserve is consistent with the state's approved coastal management program. The state must concur with or object to the certification. It is recommended that the lead state agency for Reserve designation consult, at the earliest practicable time, with the appropriate state officials concerning the consistency of a proposed National Estuarine Research Reserve.

(c) The National Estuarine Research Reserve Program will be administered in close coordination with the National Marine Sanctuary Program (Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431–1445), also administered by NOAA. Title III authorizes the Secretary of Commerce to designate discrete areas of the marine environment as National Marine Sanctuaries to protect or restore such areas for their conservation, recreational, ecological, historical, research, educational or esthetic values.

National Marine Sanctuaries and Estuarine Research Reserves may not overlap, but may be adjacent.

Subpart B—Site Selection, Post Site Selection and Management Plan Development

§ 921.10 General.

(a) A coastal state may apply for Federal financial assistance for the purpose of site selection, preparation of documents specified in § 921.13 (draft management plan (DMP) and environmental impact statement (EIS)), and the conduct of limited basic characterization studies. The total Federal share of this assistance may not exceed $100,000. Federal financial assistance for preacquisition activities under § 921.11 and § 921.12 is subject to the total $5 million for which each Reserve is eligible for land acquisition. In the case of a biogeographic region (see appendix I) shared by two or more coastal states, each state is eligible for Federal financial assistance to establish a separate National Estuarine Research Reserve within their respective portion of the shared biogeographic region. Each separate National Estuarine Research Reserve is eligible for the full complement of funding. Financial assistance application procedures are specified in subpart I.

(b) In developing a Reserve program, a state may choose to develop a multiple-site Reserve reflecting a diversity of habitats in a single biogeographic region. A multiple-site Reserve allows the state to develop complementary research and educational programs within the individual components of its multi-site Reserve. Multiple-site Reserves are treated as one Reserve in terms of financial assistance and development of an overall management framework and plan. Each individual site of a proposed multiple-site Reserve shall be evaluated both separately under § 921.11(c) and collectively as part of the site selection process. A coastal state may propose to establish a multiple-site Reserve at the time of the initial site selection, or at any point in the development or operation of the Reserve. If the state decides to develop a multiple-site National Estuarine Research Reserve after the initial acquisition and development award is made for a single site, the proposal is subject to the requirements set forth in § 921.33(b). However, a state may not propose to add one or more sites to an already designated Reserve if the operation and management of such Reserve has been found deficient and uncorrected or the research conducted is not consistent with the Estuarine Research Guidelines referenced in § 921.51. In addition, Federal funds for the acquisition of a multiple-site Reserve remain limited to $5,000,000 (see § 921.20). The funding for operation of a multiple-site Reserve is limited to the maximum allowed for any one Reserve per year (see § 921.32(c)) and preacquisition funds are limited to $100,000 per Reserve.

§ 921.11 Site selection and feasibility.

(a) A coastal state may use Federal funds to establish and implement a site selection process which is approved by NOAA.

(b) In addition to the requirements set forth in subpart I, a request for Federal funds for site selection must contain the following programmatic information:

(1) A description of the proposed site selection process and how it will be implemented in conformance with the biogeographic classification scheme and typology (§ 921.3);

(2) An identification of the site selection agency and the potential management agency; and

(3) A description of how public participation will be incorporated into the process (see § 921.11(d)).

(c) As part of the site selection process, the state and NOAA shall evaluate and select the final site(s). NOAA has final authority in approving such sites. Site selection shall be guided by the following principles:

(1) The site's contribution to the biogeographical and typological balance of the National Estuarine Research Reserve System. NOAA will give priority consideration to proposals to establish Reserves in biogeographic regions or subregions or incorporating types that are not represented in the system. (see the biogeographic classification scheme and typology set forth in § 921.3 and appendices I and II);

(2) The site's ecological characteristics, including its biological productivity, diversity of flora and fauna, and capacity to attract a broad range of research and educational interests. The proposed site must be a representative estuarine ecosystem and should, to the maximum extent possible, be an estuarine ecosystem minimally affected by human activity or influence (see § 921.1(e)).

(3) Assurance that the site's boundaries encompass an adequate portion of the key land and water areas of the natural system to approximate an ecological unit and to ensure effective conservation. Boundary size will vary greatly depending on the nature of the ecosystem. Reserve boundaries must encompass the area within which adequate control has or will be established by the managing entity over human activities occurring within the Reserve. Generally, Reserve boundaries will encompass two areas: Key land and water areas (or "core area") and a buffer zone. Key land and water areas and a buffer zone will likely require significantly different levels of control (see § 921.13(a)(7)). The term "key land and water areas" refers to that core area within the Reserve that is so vital to the functioning of the estuarine ecosystem that it must be under a level of control sufficient to ensure the long-term viability of the Reserve for research on natural processes. Key land and water areas, which comprise the core area, are those ecological units of a natural estuarine system which preserve, for research purposes, a full range of significant physical, chemical and biological factors contributing to the diversity of fauna, flora and natural processes occurring within the estuary. The determination of which land and water areas are "key" to a particular Reserve must be based on specific scientific knowledge of the area. A basic principle to follow when deciding upon key land and water areas is that they should encompass resources representative of the total ecosystem, and which if compromised could endanger the research objectives of the Reserve. The term "buffer zone" refers to an area adjacent to or surrounding key land and water areas and essential to their integrity. Buffer zones protect the core area and provide additional protection for estuarine-dependent species, including those that are rare or endangered. When determined appropriate by the state and approved by NOAA, the buffer zone may also include an area necessary for facilities required for research and interpretation. Additionally, buffer zones should be established sufficient to accommodate a shift of the core area as a result of biological, ecological or geomorphological change which reasonably could be expected to occur. National Estuarine Research Reserves may include existing Federal or state lands already in a protected status where mutual benefit can be enhanced. However, NOAA will not approve a site for potential National Estuarine Research Reserve status that is dependent primarily upon the inclusion of currently protected Federal lands in order to meet the requirements for Reserve status (such as key land and water areas). Such lands generally will be included within a Reserve to serve as a buffer or for other ancillary purposes; and may be included, subject to NOAA

approval, as a limited portion of the core area;

(4) The site's suitability for long-term estuarine research, including ecological factors and proximity to existing research facilities and educational institutions;

(5) The site's compatibility with existing and potential land and water uses in contiguous areas as well as approved coastal and estuarine management plans; and

(6) The site's importance to education and interpretive efforts, consistent with the need for continued protection of the natural system.

(d) Early in the site selection process the state must seek the views of affected landowners, local governments, other state and Federal agencies and other parties who are interested in the area(s) being considered for selection as a potential National Estuarine Research Reserve. After the local government(s) and affected landowner(s) have been contacted, at least one public meeting shall be held in the vicinity of the proposed site. Notice of such a meeting, including the time, place, and relevant subject matter, shall be announced by the state through the area's principal newspaper at least 15 days prior to the date of the meeting and by NOAA in the **Federal Register**.

(e) A state request for NOAA approval of a proposed site (or sites in the case of a multi-site Reserve) must contain a description of the proposed site(s) in relationship to each of the site selection principals (§ 921.11(c)) and the following information:

(1) An analysis of the proposed site(s) based on the biogeographical scheme/typology discussed in § 921.3 and set forth in appendices I and II;

(2) A description of the proposed site(s) and its (their) major resources. including location, proposed boundaries, and adjacent land uses. Maps are required;

(3) A description of the public participation process used by the state to solicit the views of interested parties, a summary of comments, and, if interstate issues are involved, documentation that the Governor(s) of the other affected state(s) has been contacted. Copies of all correspondence, including contact letters to all affected landowners must be appended;

(4) A list of all sites considered and a brief statement of the reasons why a site was not preferred; and

(5) A nomination of the proposed site(s) for designation as a National Estuarine Research Reserve by the Governor of the coastal state in which the state is located.

(f) A state proposing to reactivate an inactive site, previously approved by NOAA for development as an Estuarine Sanctuary or Reserve, may apply for those funds remaining, if any, provided for site selection and feasibility (§ 921.11a)) to determine the feasibility of reactivation. This feasibility study must comply with the requirements set forth in § 921.11(c) through (e).

§ 921.12 Post site selection.

(a) At the time of the coastal state's request for NOAA approval of a proposed site, the state may submit a request for funds to develop the draft management plan and for preparation of the EIS. At this time, the state may also submit a request for the remainder of the predesignation funds to perform a limited basic characterization of the physical, chemical and biological characteristics of the site approved by NOAA necessary for providing EIS information to NOAA. The state's request for these post site selection funds must be accompanied by the information specified in subpart I and, for draft management plan development and EIS information collection, the following programmatic information:

(1) A draft management plan outline (see § 921.13(a) below); and

(2) An outline of a draft memorandum of understanding (MOU) between the state and NOAA detailing the Federal-state role in Reserve management during the initial period of Federal funding and expressing the state's long-term commitment to operate and manage the Reserve.

(b) The state is eligible to use the funds referenced in § 921.12(a) after the proposed site is approved by NOAA under the terms of § 921.11.

§ 921.13 Management plan and environmental impact statement development.

(a) After NOAA approves the state's proposed site and application for funds submitted pursuant to § 921.12, the state may begin draft management plan development and the collection of information necessary for the preparation by NOAA of an EIS. The state shall develop a draft management plan, including an MOU. The plan shall set out in detail:

(1) Reserve goals and objectives, management issues, and strategies or actions for meeting the goals and objectives;

(2) An administrative plan including staff roles in administration, research, education/interpretation, and surveillance and enforcement;

(3) A research plan, including a monitoring design;

(4) An education/interpretive plan;

(5) A plan for public access to the Reserve;

(6) A construction plan, including a proposed construction schedule, general descriptions of proposed developments and general cost estimates. Information should be provided for proposed minor construction projects in sufficient detail to allow these projects to begin in the initial phase of acquisition and development. A categorical exclusion, environmental assessment, or EIS may be required prior to construction;

(7)(i) An acquisition plan identifying the ecologically key land and water areas of the Reserve, ranking these areas according to their relative importance, and including a strategy for establishing adequate long-term state control over these areas sufficient to provide protection for Reserve resources to ensure a stable environment for research. This plan must include an identification of ownership within the proposed Reserve boundaries, including land already in the public domain; the method(s) of acquisition which the state proposes to use—acquisition (including less-than-fee simple options) to establish adequate long-term state control; an estimate of the fair market value of any property interest—which is proposed for acquisition; a schedule estimating the time required to complete the process of establishing adequate state control of the proposed research reserve; and a discussion of any anticipated problems. In selecting a preferred method(s) for establishing adequate state control over areas within the proposed boundaries of the Reserve, the state shall perform the following steps for each parcel determined to be part of the key land and water areas (control over which is necessary to protect the integrity of the Reserve for research purposes), and for those parcels required for research and interpretive support facilities or buffer purposes:

(A) Determine, with appropriate justification, the minimum level of control(s) required [*e.g.*, management agreement, regulation, less-than-fee simple property interest (*e.g.*, conservation easement), fee simple property acquisition, or a combination of these approaches]. This does not preclude the future necessity of increasing the level of state control;

(B) Identify the level of existing state control(s);

(C) Identify the level of additional state control(s), if any, necessary to meet the minimum requirements identified in paragraph (a)(7)(i)(A) of this section;

(D) Examine all reasonable alternatives for attaining the level of

control identified in paragraph (a)(7)(i)(C) of this section, and perform a cost analysis of each; and

(E) Rank, in order of cost, the methods (including acquisition) identified in paragraph (a)(7)(i)(D) of this section.

(ii) An assessment of the relative cost-effectiveness of control alternatives shall include a reasonable estimate of both short-term costs (*e.g.*, acquisition of property interests, regulatory program development including associated enforcement costs, negotiation, adjudication, etc.) and long-term costs (*e.g.*, monitoring, enforcement, adjudication, management and coordination). In selecting a preferred method(s) for establishing adequate state control over each parcel examined under the process described above, the state shall give priority consideration to the least costly method(s) of attaining the minimum level of long-term control required. Generally, with the possible exception of buffer areas required for support facilities, the level of control(s) required for buffer areas will be considerably less than that required for key land and water areas. This acquisition plan, after receiving the approval of NOAA, shall serve as a guide for negotiations with landowners. A final boundary for the reserve shall be delineated as a part of the final management plan;

(8) A resource protection plan detailing applicable authorities, including allowable uses, uses requiring a permit and permit requirements, any restrictions on use of the research reserve, and a strategy for research reserve surveillance and enforcement of such use restrictions, including appropriate government enforcement agencies;

(9) If applicable, a restoration plan describing those portions of the site that may require habitat modification to restore natural conditions;

(10) If applicable, a resource manipulation plan, describing those portions of the Reserve buffer in which long-term pre-existing (prior to designation) manipulation for reasons not related to research or restoration is occurring. The plan shall explain in detail the nature of such activities, shall justify why such manipulation should be permitted to continue within the reserve buffer; and shall describe possible effects of this manipulation on key land and water areas and their resources;

(11) A proposed memorandum of understanding (MOU) between the state and NOAA regarding the Federal-state relationship during the establishment and development of the National Estuarine Research Reserve, and expressing a long-term commitment by the state to maintain and manage the Reserve in accordance with section 315 of the Act, 16 U.S.C. 1461, and applicable regulations. In conjunction with the MOU, and where possible under state law, the state will consider taking appropriate administrative or legislative action to ensure the long-term protection and operation of the National Estuarine Research Reserve. If other MOUs are necessary (such as with a Federal agency, another state agency or private organization), drafts of such MOUs must be included in the plan. All necessary MOU's shall be signed prior to Reserve designation; and

(12) If the state has a federally approved coastal management program, a certification that the National Estuarine Research Reserve is consistent to the maximum extent practicable with that program. See § 921.4(b) and § 921.30(b).

(b) Regarding the preparation of an EIS under the National Environmental Policy Act on a National Estuarine Research Reserve proposal, the state and NOAA shall collect all necessary information concerning the socioeconomic and environmental impacts associated with implementing the draft management plan and feasible alternatives to the plan. Based on this information, the state will draft and provide NOAA with a preliminary EIS.

(c) Early in the development of the draft management plan and the draft EIS, the state and NOAA shall hold a scoping meeting (pursuant to NEPA) in the area or areas most affected to solicit public and government comments on the significant issues related to the proposed action. NOAA will publish a notice of the meeting in the **Federal Register** at least 15 days prior to the meeting. The state shall be responsible for publishing a similar notice in the local media.

(d) NOAA will publish a **Federal Register** notice of intent to prepare a draft EIS. After the draft EIS is prepared and filed with the Environmental Protection Agency (EPA), a Notice of Availability of the draft EIS will appear in the **Federal Register**. Not less than 30 days after publication of the notice, NOAA will hold at least one public hearing in the area or areas most affected by the proposed national estuarine research reserve. The hearing will be held no sooner than 15 days after appropriate notice of the meeting has been given in the principal news media by the state and in the **Federal Register** by NOAA. After a 45-day comment period, a final EIS will be prepared by the state and NOAA.

Subpart C—Acquisition, Development and Preparation of the Final Management Plan

§ 921.20 General.

The acquisition and development period is separated into two major phases. After NOAA approval of the site, draft management plan and draft MOU, and completion of the final EIS, a coastal state is eligible for an initial acquisition and development award(s). In this initial phase, the state should work to meet the criteria required for formal research reserve designation; *e.g.*, establishing adequate state control over the key land and water areas as specified in the draft management plan and preparing the final management plan. These requirements are specified in § 921.30. Minor construction in accordance with the draft management plan may also be conducted during this initial phase. The initial acquisition and development phase is expected to last no longer than three years. If necessary, a longer time period may be negotiated between the state and NOAA. After Reserve designation, a state is eligible for a supplemental acquisition and development award(s) in accordance with § 921.31. In this post-designation acquisition and development phase, funds may be used in accordance with the final management plan to construct research and educational facilities, complete any remaining land acquisition, for program development, and for restorative activities identified in the final management plan. In any case, the amount of Federal financial assistance provided to a coastal state with respect to the acquisition of lands and waters, or interests therein, for any one National Estuarine Research Reserve may not exceed an amount equal to 50 per cent of the costs of the lands, waters, and interests therein or $5,000,000, whichever amount is less.

§ 921.21 Initial acquisition and development awards.

(a) Assistance is provided to aid the recipient prior to designation in:

(1) Acquiring a fee simple or less-than-fee simple real property interest in land and water areas to be included in the Reserve boundaries (see § 921.13(a)(7); § 921.30(d));

(2) Minor construction, as provided in paragraphs (b) and (c) of this section;

(3) Preparing the final management plan; and

(4) Initial management costs, *e.g.*, for implementing the NOAA approved draft management plan, hiring a Reserve manager and other staff as necessary and for other management-related

activities. Application procedures are specified in subpart I.

(b) The expenditure of Federal and state funds on major construction activities is not allowed during the initial acquisition and development phase. The preparation of architectural and engineering plans, including specifications, for any proposed construction, or for proposed restorative activities, is permitted. In addition, minor construction activities, consistent with paragraph (c) of this section also are allowed. The NOAA-approved draft management plan must, however, include a construction plan and a public access plan before any award funds can be spent on construction activities.

(c) Only minor construction activities that aid in implementing portions of the management plan (such as boat ramps and nature trails) are permitted during the initial acquisition and development phase. No more than five (5) percent of the initial acquisition and development award may be expended on such activities. NOAA must make a specific determination, based on the final EIS, that the construction activity will not be detrimental to the environment.

(d) Except as specifically provided in paragraphs (a) through (c) of this section, construction projects, to be funded in whole or in part under an acquisition and development award(s), may not be initiated until the Reserve receives formal designation (see § 921.30). This requirement has been adopted to ensure that substantial progress in establishing adequate state control over key land and water areas has been made and that a final management plan is completed before major sums are spent on construction. Once substantial progress in establishing adequate state control/acquisition has been made, as defined by the state in the management plan, other activities guided by the final management plan may begin with NOAA's approval.

(e) For any real property acquired in whole or part with Federal funds for the Reserve, the state shall execute suitable title documents to include substantially the following provisions, or otherwise append the following provisions in a manner acceptable under applicable state law to the official land record(s):

(1) Title to the property conveyed by this deed shall vest in the [recipient of the award granted pursuant to section 315 of the Act, 16 U.S.C. 1461 or other NOAA approved state agency] subject to the condition that the designation of the [name of National Estuarine Reserve] is not withdrawn and the property remains part of the federally designated [name of National Estuarine Research Reserve]; and

(2) In the event that the property is no longer included as part of the Reserve, or if the designation of the Reserve of which it is part is withdrawn, then NOAA or its successor agency, after full and reasonable consultation with the State, may exercise the following rights regarding the disposition of the property:

(i) The recipient may retain title after paying the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the current fair market value of the property;

(ii) If the recipient does not elect to retain title, the Federal Government may either direct the recipient to sell the property and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from the sale (after deducting actual and reasonable selling and repair or renovation expenses, if any, from the sale proceeds), or direct the recipient to transfer title to the Federal Government. If directed to transfer title to the Federal Government, the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the original project to the current fair market value of the property; and

(iii) Fair market value of the property must be determined by an independent appraiser and certified by a responsible official of the state, as provided by Department of Commerce regulations at 15 CFR part 24, and Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally assisted programs at 15 CFR part 11.

(f) Upon instruction by NOAA, provisions analogous to those of § 921.21(e) shall be included in the documentation underlying less-then-fee-simple interests acquired in whole or part with Federal funds.

(g) Federal funds or non-Federal matching share funds shall not be spent to acquire a real property interest in which the state will own the land concurrently with another entity unless the property interest has been identified as a part of an acquisition strategy pursuant to § 921.13(7) which has been approved by NOAA prior to the effective date of these regulations.

(h) Prior to submitting the final management plan to NOAA for review and approval, the state shall hold a public meeting to receive comment on the plan in the area affected by the estuarine research reserve. NOAA will publish a notice of the meeting in the **Federal Register** at least 15 days prior to the public meeting. The state shall be responsible for having a similar notice published in the local newspaper(s).

Subpart D—Reserve Designation and Subsequent Operation

§ 921.30 Designation of National Estuarine Research Reserves.

(a) The Under Secretary may designate an area proposed for designation by the Governor of the state in which it is located, as a National Esturaine Research Reserve if the Under Secretary finds:

(1) The area is a representative estuarine ecosystem that is suitable for long-term research and contributes to the biogeographical and typological balance of the System;

(2) Key land and water areas of the proposed Reserve, as identified in the management plan, are under adequate state control sufficient to provide long-term protection for reserve resources to ensure a stable environment for research;

(3) Designation of the area as a Reserve will serve to enhance public awareness and understanding of estuarine areas, and provide suitable opportunities for public education and interpretation;

(4) A final management plan has been approved by NOAA;

(5) An MOU has been signed between the state and NOAA ensuring a long-term commitment by the state to the effective operation and implementation of the area as a National Estuarine Research Reserve;

(6) All MOU's necessary for reserve management (*i.e.*, with relevant Federal, state, and local agencies and/or private organizations) have been signed; and

(7) The coastal state in which the area is located has complied with the requirements of subpart B.

(b) NOAA will determine whether the designation of a National Estuarine Research Reserve in a state with a federally approved coastal zone management program directly affects the coastal zone. If the designation is found to directly affect the coastal zone, NOAA will make a consistency determination pursuant to § 307(c)(1) of the Act, 16 U.S.C. 1456, and 15 CFR part 930, subpart C. See § 921.4(b). The results of this consistency determination will be published in the **Federal Register** when the notice of designation is published. See § 921.30(c).

(c) NOAA will publish the notice of designation of a National Estuarine Research Reserve in the **Federal Register**. The state shall be responsible

for having a similar notice published in the local media.

(d) The term "state control" in § 921.30(a)(3) does not necessarily require that key land and water areas be owned by the state in fee simple. Acquisition of less-than-fee simple interests (*e.g.*, conservation easements) and utilization of existing state regulatory measures are encouraged where the state can demonstrate that these interests and measures assure adequate long-term state control consistent with the purposes of the research reserve (see also § 921.13(a)(7); § 921.21(g)). Should the state later elect to purchase an interest in such lands using NOAA funds, adequate justification as to the need for such acquisition must be provided to NOAA.

§ 921.31 Supplemental acquisition and development awards.

After National Estuarine Research Reserve designation, and as specified in the approved management plan, a coastal state may request a supplemental acquisition and/or development award(s) for acquiring additional property interests identified in the management plan as necessary to strengthen protection of key land and water areas and to enhance long-term protection of the area for research and education, for facility and exhibit construction, for restorative activities identified in the approved management plan, for administrative purposes related to acquisition and/or facility construction and to develop and/or upgrade research, monitoring and education/interpretive programs. Federal financial assistance provided to a National Estuarine Research Reserve for supplemental development costs directly associated with facility construction (*i.e.*, major construction activities) may not exceed 70 percent of the total project cost. NOAA must make a specific determination that the construction activity will not be detrimental to the environment. Acquisition awards for the acquisition of lands or waters, or interests therein, for any one reserve may not exceed an amount equal to 50 per centum of the cost of the lands, waters, and interests therein or $5,000,000, whichever amount is less. In the case of a biogeographic region (see Appendix I) shared by two or more states, each state is eligible independently for Federal financial assistance to establish a separate National Estuarine Research Reserve within their respective portion of the shared biogeographic region. Application procedures are specified in subpart I. Land acquisition must follow the procedures specified in § 921.13(a)(7), § 921.21(e) and (f) and § 921.81.

§ 921.32 Operation and management: Implementation of the management plan.

(a) After the Reserve is formally designated, a coastal state is eligible to receive Federal funds to assist the state in the operation and management of the Reserve including the management of research, monitoring, education, and interpretive programs. The purpose of this Federally funded operation and management phase is to implement the approved final management plan and to take the necessary steps to ensure the continued effective operation of the Reserve.

(b) State operation and management of the Reserves shall be consistent with the mission, and shall further the goals of the National Estuarine Research Reserve program (see § 921.1).

(c) Federal funds are available for the operation and management of the Reserve. Federal funds provided pursuant to this section may not exceed 70% of the total cost of operating and managing the Reserve for any one year. In the case of a biogeographic region (see Appendix I) shared by two or more states, each state is eligible for Federal financial assistance to establish a separate Reserve within their respective portion of the shared biogeographic region (see § 921.10).

(d) Operation and management funds are subject to the following limitations:

(1) Eligible coastal state agencies may apply for up to the maximum share available per Reserve for that fiscal year. Share amounts will be announced annually by letter from the Sanctuary and Reserves Division to all participating states. This letter will be provided as soon as practicable following approval of the Federal budget for that fiscal year.

(2) No more than ten percent of the total amount (state and Federal shares) of each operation and management award may be used for construction-type activities.

§ 921.33 Boundary changes, amendments to the management plan, and addition of multiple-site components.

(a) Changes in the boundary of a Reserve and major changes to the final management plan, including state laws or regulations promulgated specifically for the Reserve, may be made only after written approval by NOAA. NOAA may require public notice, including notice in the **Federal Register** and an opportunity for public comment before approving a boundary or management plan change. Changes in the boundary of a Reserve involving the acquisition of properties not listed in the management plan or final EIS require public notice and the opportunity for comment; in certain cases, a categorical exclusion, an environmental assessment and possibly an environmental impact statement may be required. NOAA will place a notice in the **Federal Register** of any proposed changes in Reserve boundaries or proposed major changes to the final management plan. The state shall be responsible for publishing an equivalent notice in the local media. See also requirements of § 921.4(b) and § 921.13(a)(11).

(b) As discussed in § 921.10(b), a state may choose to develop a multiple-site National Estuarine Research Reserve after the initial acquisition and development award for a single site has been made. NOAA will publish notice of the proposed new site including an invitation for comments from the public in the **Federal Register**. The state shall be responsible for publishing an equivalent notice in the local newspaper(s). An EIS, if required, shall be prepared in accordance with section § 921.13 and shall include an administrative framework for the multiple-site Reserve and a description of the complementary research and educational programs within the Reserve. If NOAA determines, based on the scope of the project and the issues associated with the additional site(s), that an environmental assessment is sufficient to establish a multiple-site Reserve, then the state shall develop a revised management plan which, concerning the additional component, incorporates each of the elements described in § 921.13(a). The revised management plan shall address goals and objectives for all components of the multi-site Reserve and the additional component's relationship to the original site(s).

(c) The state shall revise the management plan for a Reserve at least every five years, or more often if necessary. Management plan revisions are subject to (a) above.

(d) NOAA will approve boundary changes, amendments to management plans, or the addition of multiple-site components, by notice in the **Federal Register**. If necessary NOAA will revise the designation document (findings) for the site.

Subpart E—Ongoing Oversight, Performance Evaluation and Withdrawal of Designation

§ 921.40 Ongoing oversight and evaluations of designated National Estuarine Research Reserves.

(a) The Sanctuaries and Reserve Division shall conduct, in accordance with section 312 of the Act and procedures set forth in 15 CFR part 928, ongoing oversight and evaluations of Reserves. Interim sanctions may be imposed in accordance with regulations promulgated under 15 CFR part 928.

(b) The Assistant Administrator may consider the following indicators of non-adherence in determining whether to invoke interim sanctions:

(1) Inadequate implementation of required staff roles in administration, research, education/interpretation, and surveillance and enforcement. Indicators of inadequate implementation could include: No Reserve Manager, or no staff or insufficient staff to carry out the required functions.

(2) Inadequate implementation of the required research plan, including the monitoring design. Indicators of inadequate implementation could include: Not carrying out research or monitoring that is required by the plan, or carrying out research or monitoring that is inconsistent with the plan.

(3) Inadequate implementation of the required education/interpretation plan. Indicators of inadequate implementation could include: Not carrying out education or interpretation that is required by the plan, or carrying out education/interpretation that is inconsistent with the plan.

(4) Inadequate implementation of public access to the Reserve. Indicators of inadequate implementation of public access could include: Not providing necessary access, giving full consideration to the need to keep some areas off limits to the public in order to protect fragile resources.

(5) Inadequate implementation of facility development plan. Indicators of inadequate implementation could include: Not taking action to propose and budget for necessary facilities, or not undertaking necessary construction in a timely manner when funds are available.

(6) Inadequate implementation of acquisition plan. Indicators of inadequate implementation could include: Not pursuing an aggressive acquisition program with all available funds for that purpose, not requesting promptly additional funds when necessary, and evidence that adequate long-term state control has not been established over some core or buffer areas, thus jeopardizing the ability to protect the Reserve site and resources from offsite impacts.

(7) Inadequate implementation of Reserve protection plan. Indicators of inadequate implementation could include: Evidence of non-compliance with Reserve restrictions, insufficient surveillance and enforcement to assure that restrictions on use of the Reserve are adhered to, or evidence that Reserve resources are being damaged or destroyed as a result of the above.

(8) Failure to carry out the terms of the signed Memorandum of Understanding (MOU) between the state and NOAA, which establishes a long-term state commitment to maintain and manage the Reserve in accordance with section 315 of the Act. Indicators of failure could include: State action to allow incompatible uses of state-controlled lands or waters in the Reserve, failure of the state to bear its fair share of costs associated with long-term operation and management of the Reserve, or failure to initiate timely updates of the MOU when necessary.

§ 921.41 Withdrawal of designation.

The Assistant Administrator may withdraw designation of an estuarine area as a National Estuarine Research Reserve pursuant to and in accordance with the procedures of section 312 and 315 of the Act and regulations promulgated thereunder.

Subpart F—Special Research Projects

§ 921.50 General.

(a) To stimulate high quality research within designated National Estuarine Research Reserves, NOAA may provide financial support for research projects which are consistent with the Estuarine Research Guidelines referenced in § 921.51. Research awards may be awarded under this subpart to only those designated Reserves with approved final management plans. Although research may be conducted within the immediate watershed of the Reserve, the majority of research activities of any single research project funded under this subpart may be conducted within Reserve boundaries. Funds provided under this subpart are primarily used to support management-related research projects that will enhance scientific understanding of the Reserve ecosystem, provide information needed by Reserve management and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues. Special research projects may be oriented to specific Reserves; however, research projects that would benefit more than one Reserve in the National Estuarine Reserve Research System are encouraged.

(b) Funds provided under this subpart are available on a competitive basis to any coastal state or qualified public or private person. A notice of available funds will be published in the **Federal Register**. Special research project funds are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with § 921.81(e)(4) ("allowable costs").

§ 921.51 Estuarine research guidelines.

(a) Research within the National Estuarine Research Reserve System shall be conducted in a manner consistent with Estuarine Research Guidelines developed by NOAA.

(b) A summary of the Estuarine Research Guidelines is published in the **Federal Register** as a part of the notice of available funds discussed in § 921.50(c).

(c) The Estuarine Research Guidelines are reviewed annually by NOAA. This review will include an opportunity for comment by the estuarine research community.

§ 921.52 Promotion and coordination of estuarine research.

(a) NOAA will promote and coordinate the use of the National Estuarine Research Reserve System for research purposes.

(b) NOAA will, in conducting or supporting estuarine research other than that authorized under section 315 of the Act, give priority consideration to research that make use of the National Estuarine Research Reserve System.

(c) NOAA will consult with other Federal and state agencies to promote use of one or more research reserves within the National Estuarine Research Reserve System when such agencies conduct estuarine research.

Subpart G—Special Monitoring Projects

§ 921.60 General.

(a) To provide a systematic basis for developing a high quality estuarine resource and ecosystem information base for National Estuarine Research Reserves and, as a result, for the System, NOAA may provide financial support for basic monitoring programs as part of operations and management under § 921.32. Monitoring funds are used to support three major phases of a

monitoring program: (1) Studies necessary to collect data for a comprehensive site description/characterization; (2) development of a site profile; and (3) formulation and implementation of a monitoring program.

(b) Additional monitoring funds may be available on a competitive basis to the state agency responsible for Reserve management or a qualified public or private person or entity. However, if the applicant is other than the managing entity of a Reserve that applicant must submit as a part of the application a letter from the Reserve manager indicating formal support of the application by the managing entity of the Reserve. Funds provided under this subpart for special monitoring projects are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with § 921.81(e)(4) ("allowable costs").

(c) Monitoring projects funded under this subpart must focus on the resources within the boundaries of the Reserve and must be consistent with the applicable sections of the Estuarine Research Guidelines referenced in § 921.51. Portions of the project may occur within the immediate watershed of the Reserve beyond the site boundaries. However, the monitoring proposal must demonstrate why this is necessary for the success of the project.

Subpart H—Special Interpretation and Education Projects

§ 921.70 General.

(a) To stimulate the development of innovative or creative interpretive and educational projects and materials to enhance public awareness and understanding of estuarine areas, NOAA may fund special interpretive and educational projects in addition to those activities provided for in operations and management under § 921.32. Special interpretive and educational awards may be awarded under this subpart to only those designated Reserves with approved final management plans.

(b) Funds provided under this subpart may be available on a competitive basis to any state agency. However, if the applicant is other than the managing entity of a Reserve, that applicant must submit as a part of the application a letter from the Reserve manager indicating formal support of the application by the managing entity of the Reserve. These funds are provided in addition to any other funds available to a coastal state under the Act. Federal funds provided under this subpart may not exceed 70% of the total cost of the project, consistent with § 921.81(e)(4) ("allowable costs").

(c) Applicants for education/interpretive projects that NOAA determines benefit the entire National Estuarine Research Reserve System may receive Federal assistance of up to 100% of project costs.

Subpart I—General Financial Assistance Provisions

§ 921.80 Application information.

(a) Only a coastal state may apply for Federal financial assistance awards for preacquisition, acquisition and development, operation and management, and special education and interpretation projects under subpart H. Any coastal state or public or private person may apply for Federal financial assistance awards for special estuarine research or monitoring projects under subpart G. The announcement of opportunities to conduct research in the System appears on an annual basis in the **Federal Register**. If a state is participating in the national Coastal Zone Management Program, the applicant for an award under section 315 of the Act shall notify the state coastal management agency regarding the application.

(b) An original and two copies of the formal application must be submitted at least 120 working days prior to the proposed beginning of the project to the following address: Sanctuaries and Reserves Division Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235. Application for Federal Assistance Standard Form 424 (Non-construction Program) constitutes the formal application for site selection, post-site selection, operation and management, research, and education and interpretive awards. The Application for Federal Financial Assistance Standard Form 424 (Construction Program) constitutes the formal application for land acquisition and development awards. The application must be accompanied by the information required in subpart B (predesignation), subpart C and § 921.31 (acquisition and development), and § 921.32 (operation and management) as applicable. Applications for development awards for construction projects, or restorative activities involving construction, must include a preliminary engineering report, a detailed construction plan, a site plan, a budget and categorical exclusion check list or environmental assessment. All applications must contain back up data for budget estimates (Federal and non-Federal shares), and evidence that the application complies with the Executive Order 12372, "Intergovernmental Review of Federal Programs." In addition, applications for acquisition and development awards must contain:

(1) State Historic Preservation Office comments;

(2) Written approval from NOAA of the draft management plan for initial acquisition and development award(s); and

(3) A preliminary engineering report for construction activities.

§ 921.81 Allowable costs.

(a) Allowable costs will be determined in accordance with applicable OMB Circulars and guidance for Federal financial assistance, the financial assistant agreement, these regulations, and other Department of Commerce and NOAA directives. The term "costs" applies to both the Federal and non-Federal shares.

(b) Costs claimed as charges to the award must be reasonable, beneficial and necessary for the proper and efficient administration of the financial assistance award and must be incurred during the award period.

(c) Costs must not be allocable to or included as a cost of any other Federally-financed program in either the current or a prior award period.

(d) General guidelines for the non-Federal share are contained in Department of Commerce Regulations at 15 CFR part 24 and OMB Circular A–110. Copies of Circular A–110 can be obtained from the Sanctuaries and Reserves Division; 1825 Connecticut Avenue, NW., suite 714; Washington, DC 20235. The following may be used in satisfying the matching requirement:

(1) *Site selection and post site selection awards.* Cash and in-kind contributions (value of goods and services directly benefiting and specifically identifiable to this part of the project) are allowable. Land may not be used as match.

(2) *Acquisition and development awards.* Cash and in-kind contributions are allowable. In general, the fair market value of lands to be included within the Reserve boundaries and acquired pursuant to the Act, with other than Federal funds, may be used as match. However, the fair market value of real property allowable as match is limited to the fair market value of a real property interest equivalent to, or required to attain, the level of control over such land(s) identified by the state and approved by the Federal

Government as that necessary for the protection and management of the National Estuarine Research Reserve. Appraisals must be performed according to Federal appraisal standards as detailed in Department of Commerce regulations at 15 CFR part 24 and the Uniform Relocation Assistance and Real Property Acquisition for Federal land Federally assisted programs in 15 CFR part 11. The fair market value of privately donated land, at the time of donation, as established by an independent appraiser and certified by a responsible official of the state, pursuant to 15 CFR part 11, may also be used as match. Land, including submerged lands already in the state's possession, may be used as match to establish a National Estuarine Research Reserve. The value of match for these state lands will be calculated by determining the value of the benefits foregone by the state, in the use of the land, as a result of new restrictions that may be imposed by Reserve designation. The appraisal of the benefits foregone must be made by an independent appraiser in accordance with Federal appraisal standards pursuant to 15 CFR part 24 and 15 CFR part 11. A state may initially use as match land valued at greater than the Federal share of the acquisition and development award. The value in excess of the amount required as match for the initial award may be used to match subsequent supplemental acquisition and development awards for the National Estuarine Research Reserve (see also § 921.20). Costs related to land acquisition, such as appraisals, legal fees and surveys, may also be used as match.

(3) *Operation and management awards.* Generally, cash and in-kind contributions (directly benefiting and specifically identifiable to operations and management), except land, are allowable.

(4) *Research, monitoring, education and interpretive awards.* Cash and in-kind contributions (directly benefiting and specifically identifiable to the scope of work), except land, are allowable.

§ 921.82 Amendments to financial assistance awards.

Actions requiring an amendment to the financial assistance award, such as a request for additional Federal funds, revisions of the approved project budget or original scope of work, or extension of the performance period must be submitted to NOAA on Standard Form 424 and approved in writing.

Appendix I to Part 921—Biogeographic Classification Scheme

Acadian

1. Northern of Maine (Eastport to the Sheepscot River.)
2. Southern Gulf of Maine (Sheepscot River to Cape Cod.)

Virginian

3. Southern New England (Cape Cod to Sandy Hook.)
4. Middle Atlantic (Sandy Hook to Cape Hatteras.)
5. Chesapeake Bay.

Carolinian

6. North Carolinas (Cape Hatteras to Santee River.)
7. South Atlantic (Santee River to St. John's River.)
8. East Florida (St. John's River to Cape Canaveral.)

West Indian

9. Caribbean (Cape Canaveral to Ft. Jefferson and south.)
10. West Florida (Ft. Jefferson to Cedar Key.)

Louisianian

11. Panhandle Coast (Cedar Key to Mobile Bay.)
12. Mississippi Delta (Mobile Bay to Galveston.)
13. Western Gulf (Galveston to Mexican border.)

Californian

14. Southern California (Mexican border to Point Conception.)
15. Central California (Point Conception to Cape Mendocino.)
16. San Francisco Bay.

Columbian

17. Middle Pacific (Cape Mendocino to the Columbia River.)
18. Washington Coast (Columbia River to Vancouver Island.)
19. Puget Sound.

Great Lakes

20. Lake Superior (including St. Mary's River.)
21. Lakes Michigan and Huron (including Straits of Mackinac, St. Clair River, and Lake St. Clair.)
22. Lake Erie (including Detroit River and Niagara Falls.)
23. Lake Ontario (including St. Lawrence River.)

Fjord

24. Southern Alaska (Prince of Wales Island to Cook Inlet.)
25. Aleutian Island (Cook Inlet Bristol Bay.)

Sub-Arctic

26. Northern Alaska (Bristol Bay to Damarcation Point.)

Insular

27. Hawaiian Islands.
28. Western Pacific Island.
29. Eastern Pacific Island.

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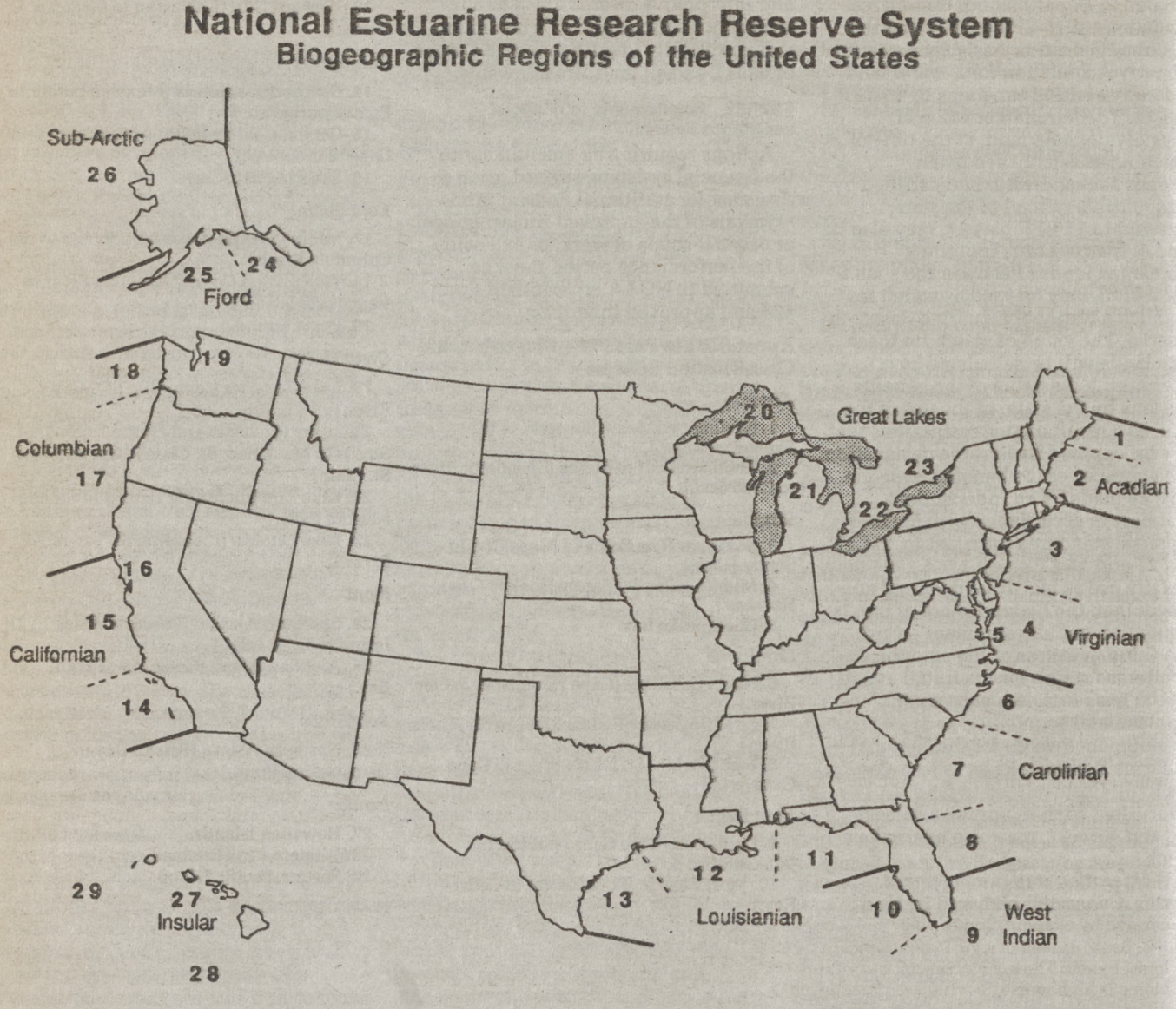
FIGURE 1



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Appendix II to Part 921—Typology of National Estuarine Research Reserves

This typology system reflects significant differences in estuarine characteristics that are not necessarily related to regional location. The purpose of this type of classification is to maximize ecosystem variety in the selection of national estuarine reserves. Priority will be given to important ecosystem types as yet unrepresented in the reserve system. It should be noted that any one site may represent several ecosystem types or physical characteristics.

Class I—Ecosystem Types

Group I—Shorelands

A. Maritime Forest-Woodland. That have developed under the influence of salt spray. It can be found on coastal uplands or recent features such as barrier islands and beaches, and may be divided into the following biomes:

1. Northern coniferous forest biome: This is an area of predominantly evergreens such as the sitka spruce (Picea), grand fir (Abies), and white cedar (Thuja), with poor development of the shrub and herb leyera, but high annual productivity and pronounced seasonal periodicity.

2. Moist temperate (Mesothermal) coniferous forest biome: Found along the west coast of North America from California to Alaska, this area is dominated by conifers, has relatively small seasonal range, high humidity with rainfall ranging from 30 to 150 inches, and a well-developed understory of vegetation with an abundance of mosses and other moisture-tolerant plants.

3. Temperate deciduous forest biome: This biome is characterized by abundant, evenly distributed rainfall, moderate temperatures which exhibit a distinct seasonal pattern, well-developed soil biota and herb and shrub layers, and numerous plants which produce pulpy fruits and nuts. A distinct subdivision of this biome is the pine edible forest of the southeastern coastal plain, in which only a small portion of the area is occupied by climax vegetation, although it has large areas covered by edaphic climax pines.

4. Broad-leaved evergreen subtropical forest biome: The main characteristic of this biome is high moisture with less pronounced differences between winter and summer. Examples are the hammocks of Florida and the live oak forests of the Gulf and South Atlantic coasts. Floral dominants include pines, magnolias, bays, hollies, wild tamarine, strangler fig, gumbo limbo, and palms.

B. Coast shrublands. This is a transitional area between the coastal grasslands and woodlands and is characterized by woody species with multiple stems and a few centimeters to several meters above the ground developing under the influence of salt spray and occasional sand burial. This includes thickets, scrub, scrub savanna, heathlands, and coastal chaparral. There is a great variety of shrubland vegetation exhibiting regional specificity:

1. Northern areas: Characterized by Hudsonia, various erinaceous species, and thickets of Myricu, prunus, and Rosa.

2. Southeast areas: Floral dominants include Myrica, Baccharis, and Iles.

3. Western areas: Adenostoma, arcotyphylos, and eucalyptus are the dominant floral species.

C. Coastal grasslands. This area, which possesses sand dunes and coastal flats, has low rainfall (10 to 30 inches per year) and large amounts of humus in the soil. Ecological succession is slow, resulting in the presence of a number of seral stages of community development. Dominant vegetation includes mid-grasses (5 to 8 feet tall), such as Spartina, and trees such as willow (Salix sp.), cherry (Prunus sp.), and cottonwood (Pupulus deltoides.) This area is divided into four regions with the following typical strand vegetation:

1. Arctic/Boreal: Elymus;
2. Northeast/West: Ammophla;
3. Southeast Gulf: Uniola; and
4. Mid-Atlantic/Gulf: Spartina patens.

D. Coastal tundra. This ecosystem, which is found along the Arctic and Boreal coasts of North America, is characterized by low temperatures, a short growing season, and some permafrost, producing a low, treeless mat community made up of mosses, lichens, heath, shrubs, grasses, sedges, rushes, and herbaceous and dwarf woody plants. Common species include arctic/alpine plants such as Empetrum nigrum and Betula nana, the lichens Cetraria and Cladonia, and herbaceous plants such as Potentilla tridentata and Rubus chamaemorus. Common species on the coastal beach ridges of the high arctic desert include Bryas intergrifolia and Saxifrage oppositifolia. This area can be divided into two main subdivisions:

1. Low tundra: Characterized by a thick, spongy mat of living and undecayed vegetation, often with water and dotted with ponds when not frozen; and

2. High Tundra: A bare area except for a scanty growth of lichens and grasses, with underlaying ice wedges forming raised polygonal areas.

E. Coastal cliffs. This ecosystem is an important nesting site for many sea and shore birds. It consists of communities of herbaceous, graminoid, or low woody plants (shrubs, heath, etc.) on the top or along rocky faces exposed to salt spray. There is a diversity of plant species including mosses, lichens, liverworts, and "higher" plant representatives.

Group II—Transition Areas

A. Coastal marshes. These are wetland areas dominated by grasses (Poacea), sedges (Cyperaceae), rushes (Juncaceae), cattails (Typhaceae), and other graminoid species and is subject to periodic flooding by either salt or freshwater. This ecosystem may be subdivided into: (a) Tidal, which is periodically flooded by either salt or brackish water; (b) nontidal (freshwater); or (c) tidal freshwater. These are essential habitats for many important estuarine species of fish and invertebrates as well as shorebirds and waterfowl and serve important roles in shore stabilization, flood control, water purification, and nutrient transport and storage.

B. Coastal swamps. These are wet lowland areas that support mosses and shrubs together with large trees such as cypress or gum.

C. Coastal mangroves. This ecosystem experiences regular flooding on either a daily, monthly, or seasonal basis, has low wave action, and is dominated by a variety of salt-tolerant trees, such as the red mangrove (Rhizophora mangle), black mangrove (Avicennia Nitida), and the white mangrove (Laguncularia racemosa.) It is also an important habitat for large populations of fish, invertebrates, and birds. This type of ecosystem can be found from central Florida to extreme south Texas to the islands of the Western Pacific.

D. Intertidal beaches. This ecosystem has a distinct biota of microscopic animals, bacteria, and unicellular algae along with macroscopic crustaceans, mollusks, and worms with a detritus-based nutrient cycle. This area also includes the driftline communities found at high tide levels on the beach. The dominant organisms in this ecosystem include crustaceans such as the mole crab (Emerita), amphipods (Gammeridae), ghost crabs (Ocypode), and bivalve mollusks such as the coquina (Donax) and surf clams (Spisula and Mactra.)

E. Intertidal mud and sand flats. These areas are composed of unconsolidated, high organic content sediments that function as a short-term storage area for nutrients and organic carbons. Macrophytes are nearly absent in this ecosystem, although it may be heavily colonized by benthic diatoms, dinoflaggellates, filamintous blue-green and green algae, and chaemosynthetic purple sulfur bacteria. This system may support a considerable population of gastropods, bivalves, and polychaetes, and may serve as a feeding area for a variety of fish and wading birds. In sand, the dominant fauna include the wedge shell Donax, the scallop Pecten, tellin shells Tellina, the heart urchin Echinocardium, the lug worm Arenicola, sand dollar Dendraster, and the sea pansy Renilla. In mud, faunal dominants adapted to low oxygen levels include the terebellid Amphitrite, the boring clam Playdon, the deep sea scallop Placopecten, the Quahog Mercenaria, the echiurid worm Urechis, the mud snail Nassarius, and the sea cucumber Thyone.

F. Intertidal algal beds. These are hard substrates along the marine edge that are dominated by macroscopic algae, usually thalloid, but also filamentous or unicellular in growth form. This also includes the rocky coast tidepools that fall within the intertidal zone. Dominant fauna of these areas are barnacles, mussels, periwinkles, anemones, and chitons. Three regions are apparent:

1. Northern latitude rocky shores: It is in this region that the community structure is best developed. The dominant algal species include Chondrus at the low tide level, Fucus and Ascophylium at the mid-tidal level, and Laminaria and other kelplike algae just beyond the intertidal, although they can be exposed at extremely low tides or found in very deep tidepools.

2. Southern latitudes: The communities in this region are reduced in comparison to those of the northern latitudes and possesses algae consisting mostly of single-celled or filamentour green, blue-green, and red algae, and small thalloid brown algae.

3. Tropical and subtropical latitudes: The intertidal in this region is very reduced and contains numerous calcareous algae such as Porolithon and Lithothamnion, as well and green algae with calcareous particles such as Halimeda, and numerous other green, red, and brown algae.

Group III—Submerged Bottoms

A. Subtidal hardbottoms. This system is characterized by a consolidated layer of solid rock or large pieces of rock (neither of biotic origin) and is found in association with geomorphological features such as submarine canyons and fjords and is usually covered with assemblages of sponges, sea fans, bivalves, hard corals, tunicates, and other attached organisms. A significant feature of estuaries in many parts of the world is the oyster reef, a type of subtidal hardbottom. Composed of assemblages of organisms (usually bivalves), it is usually found near an estuary's mouth in a zone of moderate wave action, salt content, and turbidity. If light levels are sufficient, a covering of microscopic and attached macroscopic algae, such as keep, may also be found.

B. Subtidal softbottoms. Major characteristics of this ecosystem are an unconsolidated layer of fine particles of silt, sand, clay, and gravel, high hydrogen sulfide levels, and anaerobic conditions often existing below the surface. Macrophytes are either sparse or absent, although a layer of benthic microalgae may be present if light levels are sufficient. The faunal community is dominated by a diverse population of deposit feeders including polychaetes, bivalves, and burrowing crustaceans.

C. Subtidal plants. This system is found in relatively shallow water (less than 8 to 10 meters) below mean low tide. It is an area of extremely high primary production that provides food and refuge for a diversity of faunal groups, especially juvenile and adult fish, and in some regions, manatees and sea turtles. Along the North Atlantic and Pacific coasts, the seagrass Zostera marina predominates. In the South Atlantic and Gulf coast areas, Thalassia and Diplanthera predominate. The grasses in both areas support a number of epiphytic organisms.

Class II—Physical Characteristics

Group I—Geologic

A. Basin type. Coastal water basins occur in a variety of shapes, sizes, depths, and appearances. The eight basic types discussed below will cover most of the cases:

1. Exposed coast: Solid rock formations or heavy sand deposits characterize exposed ocean shore fronts, which are subject to the full force of ocean storms. The sand beaches are very resilient, although the dunes lying just behind the beaches are fragile and easily damaged. The dunes serve as a sand storage area making them chief stabilizers of the ocean shorefront.

2. Sheltered coast: Sand or coral barriers, built up by natural forces, provide sheltered areas inside a bar or reef where the ecosystem takes on many characteristics of confined waters-abundant marine grasses, shellfish, and juvenile fish. Water movement is reduced, with the consequent effects pollution being more severe in this area than in exposed coastal areas.

3. Bay: Bays are larger confined bodies of water that are open to the sea and receive strong tidal flow. When stratification is pronounced the flushing action is augmented by river discharge. Bays vary in size and in type of shorefront.

4. Embayment: A confined coastal water body with narrow, restricted inlets and with a significant freshwater inflow can be classified as an embayment. These areas have more restricted inlets than bays, are usually smaller and shallower, have low tidal action, and are subject to sedimentation.

5. Tidal river: The lower reach of a coastal river is referred to as a tidal river. The coastal water segment extends from the sea or estuary into which the river discharges to a point as far upstream as there is significant salt content in the water, forming a salt front. A combination of tidal action and freshwater outflow makes tidal rivers well-flushed. The tidal river basin may be a simple channel or a complex of tributaries, small associated embayments, marshfronts, tidal flats, and a variety of others.

6. Lagoon: Lagoons are confined coastal bodies of water with restricted inlets to the sea and without significant freshwater inflow. Water circulation is limited, resulting in a poorly flushed, relatively stagnant body of water. Sedimentation is rapid with a great potential for basin shoaling. Shores are often gently sloping and marshy.

7. Perched coastal wetlands: Unique to Pacific islands, this wetland type found above sea level in volcanic crater remnants forms as a result of poor drainage characteristics of the crater rather than from sedimentation. Floral assemblages exhibit distinct zonation while the faunal constituents may include freshwater, brackish, and/or marine species. Example: Aunu's Island, American Samoa.

8. Anchialine systems: These small coastal exposures of brackish water form in lava depressions or elevated fossil reefs have only a subsurface connection in the ocean, but show tidal fluctuations. Differing from true estuaries in having no surface continuity with streams or ocean, this system is characterized by a distinct biotic community dominated by benthis algae such as Rhizoclonium, the mineral encrusting Schiuzothrix, and the vascular plant Ruppia maritima. Characteristic fauna which exhibit a high degree of endemicity, include the mollusks Theosoxus neglectus and Tcariosus. Although found throughout the world, the high islands of the Pacific are the only areas within the U.S. where this system can be found.

B. Basin structure. Estuary basins may result from the drowning of a river valley (coastal plains estuary), the drowning of a glacial valley (fjord), the occurrence of an offshore barrier (bar-bounded estuary), some tectonic process (tectonic estuary), or volcanic activity (volcanic estuary).

1. Coastal plains estuary: Where a drowned valley consists mainly of a single channel, the form of the basin is fairly regular forming a simple coastal plains estuary. When a channel is flooded with numerous tributaries an irregular estuary results. Many estuaries of the eastern United States are of this type.

2. Fjord: Estuaries that form in elongated steep headlands that alternate with deep U-shaped valleys resulting from glacial scouring are called fjords. They generally possess rocky floors or very thin veneers of sediment, with deposition generally being restricted to the head where the main river enters. Compared to total fjord volume river discharge is small. But many fjords have restricted tidal ranges at their mouths due to sills, or upreaching sections of the bottom which limit free movement of water, often making river flow large with respect to the tidal prism. The deepest portions are in the upstream reaches, where maximum depths can range from 800m to 1200m while sill depths usually range from 40m to 150m.

3. Bar-bounded estuary: These result from the development of an offshore barrier such as a beach strand, a line of barrier islands, reef formations a line of moraine debris, or the subsiding remnants of a deltaic lobe. The basin is often partially exposed at low tide and is enclosed by a chain of offshore bars of barrier islands broken at intervals by inlets. These bars may be either deposited offshore or may be coastal dunes that have become isolated by recent seal level rises.

4. Tectonic estuary: These are coastal indentures that have formed through tectonic processes such as slippage along a fault line (San Francisco Bay), folding or movement of the earth's bedrock often with a large inflow of freshwater.

5. Volcanic estuary: These coastal bodies of open water, a result of volcanic processes are depressions or craters that have direct and/or subsurface connections with the ocean and may or may not have surface continuity with streams. These formations are unique to island areas of volcanic orgin.

C. Inlet type. Inlets in various forms are an integral part of the estuarine environment as they regulate to a certain extent, the velocity and magnitude of tidal exchange, the degree of mixing, and volume of discharge to the sea.

1. Unrestricted: An estuary with a wide unrestricted inlet typically has slow currents, no significant turbulence, and receives the full effect of ocean waves and local disturbances which serve to modify the shoreline. These estuaries are partially mixed, as the open mouth permits the incursion of marine waters to considerable distances upstream, depending on the tidal amplitude and stream gradient.

2. Restricted: Restrictions of estuaries can exist in many forms: Bars, barrier islands, spits, sills, and more. Restricted inlets result in decreased circulation, more pronounced longitudinal and vertical salinity gradients, and more rapid sedimentation. However, if the estuary mouth is restricted by depositional features or land closures, the incoming tide may be held back until it suddenly breaks forth into the basin as a tidal wave, or bore. Such currents exert profound effects on the nature of the subtrate, turbidity, and biota of the estuary.

3. Permanent: Permanent inlets are usually opposite the mouths of major rivers and permit river water to flow into the sea.

4. Temporary (Intermittent): Temporary inlets are formed by storms and frequently shift position, depending on tidal flow, the depth of the sea, and sound waters, the frequency of storms, and the amount of littoral transport.

D. Bottom composition. The bottom composition of estuaries attests to the vigorous, rapid, and complex sedimentation processes characteristic of most coastal regions with low relief. Sediments are derived through the hydrologic processes of erosion, transport, and deposition carried on by the sea and the stream.

1. Sand: Near estuary mouths, where the predominating forces of the sea build spits or other depositional features, the shore and substrates of the estuary are sandy. The bottom sediments in this area are usually coarse, with a graduation toward finer particles in the head region and other zones of reduced flow, fine silty sands are deposited. Sand deposition occurs only in wider or deeper regions where velocity is reduced.

2. Mud. At the base level of a stream near its mouth, the bottom is typically composed of loose muds, silts, and organic detritus as a result of erosion and transport from the upper stream reaches and organic decomposition. Just inside the estuary entrance, the bottom contains considerable quantities of sand and mud, which support a rich fauna. Mud flats, commonly built up in estuarine basins, are composed of loose, coarse, and fine mud and sand, often dividing the original channel.

3. Rock: Rocks usually occur in areas where the stream runs rapidly over a steep gradient with its coarse materials being derived from the higher elevations where the stream slope is greater. The larger fragments are usually found in shallow areas near the stream mouth.

4. Oyster shell: Throughout a major portion of the world, the oyster reef is one of the most significant features of estuaries, usually being found near the mouth of the estuary in a zone of moderate wave action, salt content, and turbidity. It is often a major factor in modifying estuarine current systems and sedimentation, and may occur as an elongated island or peninsula oriented across the main current, or may develop parallel to the direction of the current.

Group II—Hydrographic

A. Circulation. Circulation patterns are the result of combined influences of freshwater inflow, tidal action, wind and oceanic forces, and serve many functions: Nutrient transport, plankton dispersal, ecosystem flushing, salinity control, water mixing, and more.

1. Stratified: This is typical of estuaries with a strong freshwater influx and is commonly found in bays formed from "drowned" river valleys, fjords, and other deep basins. There is a net movement of freshwater outward at the top layer and saltwater at the bottom layer, resulting in a net outward transport of surface organisms and net inward transport of bottom organisms.

2. Non-stratified: Estuaries of this type are found where water movement is sluggish and flushing rate is low, although there may be sufficient circulation to provide the basis for a high carrying capacity. This is common to shallow embayments and bays lacking a good supply of freshwater from land drainage.

3. Lagoonal: An estuary of this type is characterized by low rates of water movement resulting from a lack of significant freshwater influx and a lack of strong tidal exchange because of the typically narrow inlet connecting the lagoon to the sea. Circulation whose major driving force is wind, is the major limiting factor in biological productivity within lagoons.

B. Tides. This is the most important ecological factor in an estuary as it affects water exchange and its vertical range determines the extent of tidal flats which may be exposed and submerged with each tidal cycle. Tidal action against the volume of river water discharged into an estuary results in a complex system whose properties vary according to estuary structure as well as the magnitude of river flow and tidal range. Tides are usually described in terms of the cycle and their relative heights. In the United States, tide height is reckoned on the basis of average low tide, which is referred to as datum. The tides, although complex, fall into three main categories:

1. Diurnal: This refers to a daily change in water level that can be observed along the shoreline. There is one high tide and one low tide per day.

2. Semidiurnal: This refers to a twice daily rise and fall in water that can be observed along the shoreline.

3. Wind/Storm tides: This refers to fluctuations in water elevation to wind and storm events, where influence of lunar tides is less.

C. Freshwater. According to nearly all the definitions advanced, it is inherent that all estuaries need freshwater, which is drained from the land and measurably dilutes seawater to create a brackish condition. Freshwater enters an estuary as runoff from the land either from a surface and/or subsurface source.

1. Surface water: This is water flowing over the ground in the form of streams. Local variation in runoff is dependent upon the nature of the soil (porosity and solubility), degree of surface slope, vegetational type and development, local climatic conditions, and volume and intensity of precipitation.

2. Subsurface water: This refers to the precipitation that has been absorbed by the soil and stored below the surface. The distribution of subsurface water depends on local climate, topography, and the porosity and permeability of the underlying soils and rocks. There are two main subtypes of surface water:

a. Vadose water: This is water in the soil above the water table. Its volume with respect to the soil is subject to considerable fluctuation.

b. Groundwater: This is water contained in the rocks below the water table, is usually of more uniform volume than vadose water, and generally follows the topographic relief of the land being high hills and sloping into valleys.

Group III—Chemical

A. Salinity. This reflects a complex mixture of salts, the most abundant being sodium chloride, and is a very critical factor in the distribution and maintenance of many estuarine organisms. Based on salinity, there are two basic estuarine types and eight different salinity zones (expressed in parts per thousand-ppt.)

1. Positive estuary: This is an estuary in which the freshwater influx is sufficient to maintain mixing, resulting in a pattern of increasing salinity toward the estuary mouth. It is characterized by low oxygen concentration in the deeper waters and considerable organic content in bottom sediments.

2. Negative estuary: This is found in particularly arid regions, where estuary evaporation may exceed freshwater inflow, resulting in increased salinity in the upper part of the basin, especially if the estuary mouth is restricted so that tidal flow is inhibited. These are typically very salty (hyperhaline), moderately oxygenated at depth, and possess bottom sediments that are poor in organic content.

3 Salinity zones (expressed in ppt):

a. Hyperhaline—greater than 40 ppt.

b. Euhaline—40 ppt to 30 ppt.

c. Mixhaline—30 ppt to 0.5 ppt.

(1) Mixoeuhaline—greater than 30 ppt but less than the adjacent euhaline sea.

(2) Polyhaline—30 ppt to 18 ppt.

(3) Mesohaline—18 ppt to 5 ppt.

(4) Oligohaline—5 ppt to 0.5 ppt.

d. Limnetic: Less than 0.5 ppt.

B. pH Regime: This is indicative of the mineral richness of estuarine waters and falls into three main categories:

1. Acid. Waters with a pH of less than 5.5.

2. Circumneutral. A condition where the pH ranges from 5.5 to 7 4.

3 Alkaline: Waters with a pH greater thar 7.4

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Thursday
July 15, 1993

Part VI

Department of Health and Human Services

Administration for Children and Families

Adoption Opportunities, Crisis Nurseries/ Respite Care and Child Welfare Training, Grant Program Announcement; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Discretionary Grant Program Announcement for Adoption Opportunities, Crisis Nurseries/Respite Care and Child Welfare Training

AGENCY: Administration on Children, Youth and Families [ACYF], Administration for Children and Families [ACF], Department of Health and Human Services [DHHS].

ACTION: Announcement of the availability of financial assistance and request for applications to carry out demonstration and training projects under programs in the Children's Bureau, Administration on Children, Youth and Families.

SUMMARY: The Administration on Children, Youth and Families (ACYF) announces the availability of fiscal year 1993 funds for competing new discretionary grants in the following program areas: Adoption Opportunities, Crisis Nurseries/Respite Care and Child Welfare Training. Funding for ACYF grants and cooperative agreements under this announcement is authorized by legislation governing each program area.

This announcement contains all of the necessary application material to apply for these grants and cooperative agreements.

DATES: The closing date for the receipt of all applications under this announcement is August 30, 1993.

ADDRESSES: Application receipt point: Department of Health and Human Services Administration for Children and Families, Division of Discretionary Grants, Room 341–F, Hubert H. Humphrey Building, 2000 Independence Avenue, SW., Washington, DC 20201, Attn: _____(Reference announcement number and priority area.).

FOR FURTHER INFORMATION CONTACT: Administration on Children, Youth and Families, Children's Bureau, P.O. Box 1182, Washington, DC 20013, Telephone: (202) 205–8618.

SUPPLEMENTARY INFORMATION: For the past 11 years, ACYF has published most of its priority areas for funding as part of the ACF Coordinated Discretionary Funds Program announcements. This year, program announcements will be issued separately by each ACF agency.

The Administration on Children, Youth and Families (ACYF) administers national programs for children and youth, works with States and local communities to develop services which support and strengthen family life, seeks out joint ventures with the private sector to enhance the lives of children and their families, and provides information and other assistance to parents.

The concerns of ACYF extend to all children from birth through adolescence, with particular emphasis on children who have special needs. Many of the programs administered by the agency focus on children from low-income families; children and youth in need of foster care, adoption or other child welfare services; preschool children and preschool children with disabilities; abused and neglected children; runaway and homeless youth; and children from American Indian and migrant families.

The priority areas for three ACYF programs are included in this announcement: Adoption Opportunities, Child Welfare Services Training and Temporary Child Care and Crisis Nurseries. The priority areas identified in this announcement are derived from legislative mandates as well as Departmental goals and initiatives. The priorities reflect the state of current knowledge as well as emerging issues which come to ACYF's attention by several means including consultation with advocates, policymakers, and practitioners in the field.

The priorities seek to focus attention on and to encourage demonstration efforts to obtain new knowledge and improvements in service delivery for the solution of particular problems and to promote the dissemination and utilization of the knowledge and model practices developed under these priorities.

This program announcement consists of three parts. Part I provides information on the goals of the Children's Bureau (CB), the ACYF office which is requesting applications, and its statutory authorities for awarding grants.

Part II describes the review process and the programmatic priorities under which applications are being solicited.

Part III provides information and instructions for the development and submission of applications.

Part I—Introduction

A. Goals of ACYF's Children's Bureau

Within ACYF, the Children's Bureau's Division of Child Welfare plans, manages, coordinates and supports child welfare services programs. It administers the Foster Care and Adoption Assistance Program, the Child Welfare Services Program, the Child Welfare Research, Demonstration and Training Program, the Adoption Opportunities Program, the Temporary Child Care and Crisis Nurseries Program, and the Abandoned Infants Assistance Program.

The Bureau's programs are designed to promote the welfare of all children, including disabled, homeless, dependent or neglected children and their families. The programs aid in preventing and remedying the neglect, abuse and exploitation of children and the unnecessary separation of children from their families.

B. Statutory Authorities Covered Under This Announcement

- The Adoption Opportunities Program provides financial support for demonstration projects to improve adoption practices, to eliminate barriers to adoption and to find permanent homes for children, particularly children with special needs. Authorization: The Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Title II, Section 203, Public Law 95–266; and the Child Abuse Prevention, Adoption and Family Services Act of 1988, Title II, Section 201, Public Law 100–294, Public Law 102–295, 42 U.S.C. 5113 et seq. CFDA: 93.652.
- The Temporary Child Care for Children With Disabilities and Crisis Nurseries Program provides demonstration grants to States to assist private and public agencies in developing temporary child care (respite care) for children with disabilities and crisis nurseries for children at risk of child abuse and neglect. Authorization: Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986, as amended, 42 U.S.C. 5117a, 5117b, 5117c. CFDA: 93.656.
- The Child Welfare Services Training Program provides discretionary grants to accredited public or other nonprofit institutions of higher learning to develop and improve educational and training programs to assist child welfare agencies to upgrade skills and qualifications of staff. Authorization: Section 426(a)(1)(C) of the Social Security Act, as amended, 42 U.S.C. 626(a)(1)(C). CFDA: 93.648.

Part II—Review Process and Priority Areas

A. Eligible Applicants

Each priority area description contains information about the types of agencies and organizations which are eligible to apply under that priority area. Since eligibility varies among

priority areas depending on statutory provisions, it is critical that the "Eligible Applicants" section under each specific priority area be read carefully.

Before applications are reviewed, each application will be screened to determine that the applicant organization is an eligible applicant as specified under the selected priority area. Applications from organizations which do not meet the eligibility requirements for the priority area will not be considered or reviewed in the competition, and the applicant will be so informed.

Only agencies and organizations, not individuals, are eligible to apply under any of the priority areas. On all applications developed jointly by more than one agency or organization, the applications must identify only one organization as the lead organization and official applicant. The Other participating agencies and organizations can be included as co-participants, subgrantees or subcontractors. For-profit organizations are eligible to participate as subgrantees or subcontractors with eligible non-profit organizations under all of the priority areas.

Any non-profit agency which has not previously received Federal support must submit proof of non-profit status with its grant application. The non-profit agency can accomplish this either by making reference to its listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations or by submitting a copy of its letter from the IRS under IRS Code section 501(c)(3). ACYF cannot fund a non-profit applicant without acceptable proof of its non-profit status.

B. Review Process and Funding Decisions

Timely applications from eligible applicants will be reviewed and scored competitively. Experts in the field, generally persons from outside of the Federal government, will use the evaluation criteria listed in Section C, Evaluation Criteria, to review and score the applications. The results of this review are a primary factor in making funding decisions.

ACYF reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant. It may also solicit comments from ACYF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ACYF in making funding decisions.

In making decisions on awards, ACYF may give preference to applications which focus on or feature: minority populations; a substantial innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations involved in the administration or delivery of human services, substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ACYF may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Criteria

A panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. Applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

Reviews will determine the strengths and weaknesses of each proposal in terms of the evaluation criteria listed below, provided comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section may be given in the review process.

Applications under all priority areas will be evaluated against the following criteria.

1. Objective and Need for Assistance (20 Points)

The extent to which the application pinpoints any relevant physical, economic, social, financial, institutional or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and include and/or references relevant data. The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

2. Results or Benefits Expected (20 Points)

The extent to which the application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the proposal, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs are reasonable in view of the expected results.

3. Approach (35 Points)

The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking the proposed approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; provides for projections of the accomplishments to be achieved; and lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

The extent to which, when applicable, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. The extent to which the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The extent to which the application identifies each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities each will undertake and the nature of their effort or contribution.

4. Staff Background and Organization's Experience (25 Points)

The extent to which the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the

experience of the organization demonstrate the applicant's ability to effectively and efficiently administer the project. The extent to which the application describes the relationship between the proposed project and other relevant work planned, anticipated or underway by the applicant.

D. Structure of Priority Area Descriptions

Each priority area description is composed of the following sections:

Eligible Applicants: This section specifies the type of organization which is eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.

Purpose: This section presents the basic focus and/or broad goal(s) of the priority area.

Background Information: This section briefly discusses the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACYF and/or other State models are noted, where applicable. Some priority areas specify individuals to contact for more information.

Minimum Requirements for Project Design: This section presents the basis set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items in the applicant's proposal is important since they will be used by the reviewers in evaluating the proposal against the evaluation criteria. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if appropriate, should also be addressed.

Project Duration: This section specifies the maximum allowable length of time for the project period; it refers to the amount of time for which Federal funding is available.

Federal Share of Project Cost: This section specifies the maximum amount of Federal support for the project.

Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded. The term budget period refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term project period refers to the total time a project is approved for support, including any extensions.

Matching Requirement: This section specifies the minimum non-Federal contribution, either through cash or in-kind match, that is required. Applicants are encouraged to meet their match requirements through cash contributions. Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. Therefore, a project requesting $50,000 in Federal funds must include a match of at least $16,666 (25 percent of the total project cost).

Anticipated Number of Projects To Be Funded: This section specifies the number of projects that ACYF anticipates it will fund in the priority area. *CFDA:* This section identifies the Catalog of Federal Domestic Assistance (CFDA) number and title of the program under which applications in this priority area will be funded. This information is needed to complete item 10 on the SF 424.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so. An applicant should ensure the availability of any amount proposed as match prior to including it in the budget. The non-Federal share must be met by a grantee during the life of the project. Otherwise, ACF will disallow any unmatched Federal funds.

For priority areas advertising multi-year projects, awards, on a competitive basis, will be for a one-year budget period, although project periods may be longer. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and a determination made that continued funding would be in the best interest of the Government.

E. Available Funds

ACYF intends to award new grants and cooperative agreements resulting from this announcement during the fourth quarter of fiscal year 1993 and, possibly, during the first and second quarters of fiscal year 1994, subject to the availability of funding.

F. List of Priority Areas

1.01—Developing Collaborative Efforts Between Foster Care and Adoption Staff to Improve Child Welfare Services

1.02—National Resource Center for Special Needs Adoption

1.03—Leadership Development: Adoptive Parent Groups

1.04—Increase Adoptive Placements of Minority Children

1.05—Adoptive Placement of Foster Children

1.06—Post-Legal Adoption Services

1.07—Professional Education for Public Child Welfare Practitioners

1.08A—Temporary Child Care for Children with Disabilities and Chronically Ill Children, and

1.08B—Crisis Nurseries

G. Priority Areas

1.01 Developing Collaborative Efforts Between Foster Care and Adoption Staff to Improve Child Welfare Services.

Eligible Applicants: Public State agencies. Only one agency per Federal Region will be awarded a grant.

Purpose: To establish and improve collaboration and develop linkages between public child welfare agency foster care and adoption staff in order to improve practices related to one or more of the issues addressed in the background section. The State that receives funding within its Region will be designated as the lead State. That State will assume responsibility for bringing together foster care and adoption staff in participating States within its Region to address effective intervention approaches to deal with placement issues.

Background: It is the policy of all States to encourage adoption opportunities for children with special needs who are without permanent families and who could benefit from adoption. In most agencies, children enter the child welfare system through protective services units which determine whether the child is dependent, neglected or abandoned. Generally, children are placed temporarily in substitute care pending an assessment of the child's needs and the family situation. When children are in substitute care, agencies must develop a case plan for each child and conduct periodic case reviews and dispositional hearings to monitor progress under the plan and to evaluate its appropriateness for attaining a permanent home.

There are a number of issues which may be directly related to a lack of coordination and collaboration among public child welfare agencies. ACYF has identified three issues which should be addressed under this priority area. One of the issues to be addressed is the

child's first foster care placement, which may ultimately become a permanent placement. Over 60 percent of adopted special needs children have been adopted by their foster parents. Therefore, workers must carefully consider this factor when selecting initial foster care placements. Consideration must be given to whether the best interests of the child would be served if the foster care placement becomes a permanent home. With respect to this issue particular attention must be given to a number of critical matters, including race, ethnicity and culture. This is especially true for special needs children who may be older and aware of their cultural histories, their siblings and their extended families.

Recently, foster parents have resorted to the courts when children are removed from their foster homes for adoptive placement in other homes that the agency has determined are more in the child's best interest. These cases generate considerable publicity and are very damaging to the children, who may be moved to yet another foster family home until the court determines where the child is to permanently reside. The child welfare system must take more responsibility for the consequences of placement decisions; therefore, better planning must ensure that both initial and permanent placements for these children are timely and appropriate.

A second issue to be addressed involves adoptive children who require residential placements. These placements should be considered as interim placements in the hopes that the child will eventually return to the adoptive family. However, staff in residential facilities do not have access to training on adoption issues as they relate to the child and the adoptive family. Consequently, staff may fail to work with families toward the reunification of the child with the family. The residential facilities are usually private agencies and are accustomed to providing services to children who have been abused and neglected. Coordination needs to be effected among child welfare agencies and residential facilities to achieve comprehensive services for these children.

The third issue to be addressed is the organizational separation, in many State agencies, of foster care and adoption staff. Such structural separation tends to hinder communication, case planning and case management for children who move from foster care status to adoption status.

ACYF seeks proposals from States for projects which will improve collaboration among foster care and adoption services staff within the participating States in a Region. These three-year grants will culminate in the development and implementation of models of coordinated services to foster and adoptive children designed and tested in each Region.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Focus on addressing one or more of the issues addressed in the background section.
- Provide letters of support for the project from a minimum of three States in the Region (which includes the State submitting the application) that would participate in the project.
- Describe the existing organization of foster care/adoption services in States within the Region and the need to develop and implement a new approach for these two functions to work together more effectively.
- Identify and describe existing barriers to coordination in practice and policy in the States that would participate in the project.
- Provide assurances that a key representative who can speak for the project would attend an annual three-day Adoption Opportunities grantees meeting in Washington, D.C.
- Provide assurances that the project would be staffed and implemented within 90 days of the notification of the grant award.

Federal Share of Project Cost: The Federal share per project will be up to $75,000 per year.

Project Duration: The length of the project must not exceed 36 months.

Matching or Cost Sharing Requirement: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. A project requesting $75,000 per year in Federal funds must include a match of at least $25,000 per year (25 percent of the total yearly project cost of $100,000). The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects: It is anticipated that 10 projects will be funded, one in each Department of Health and Human Services Region.

The Regions, and the States included in them, are as follows:

Regions	States
I	Vermont, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island.
II	New York, New Jersey, Virgin Islands, Puerto Rico.
III	Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia.
IV	Alabama, Florida, Georgia, South Carolina, Kentucky, Mississippi, North Carolina, Tennessee.
V	Illinois, Michigan, Ohio, Wisconsin, Minnesota, Indiana.
VI	Texas, Arkansas, Louisiana, New Mexico, Oklahoma.
VII	Missouri, Iowa, Nebraska, Kansas.
VIII	Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
IX	California, Arizona, Nevada, Hawaii.
X	Washington, Alaska, Oregon, Idaho.

CFDA: 93.652 Adoption Opportunities Grants: Section 203(c) of the Child Abuse Prevention and Treatment and Adoption Act of 1978, as amended.

1.02 National Resource Center for Special Needs Adoption

Eligible Applicants: Any State, local, public or private non-profit agency or organization, including accredited colleges and universities, may submit applications under this announcement.

Purpose: To provide assistance to State and local, public and private child welfare and adoption agencies for the development, expansion, strengthening and improvement of the quality and effectiveness of adoption services to children and families through the (1) dissemination of materials, including curricula, guidelines and training materials; (2) development and dissemination of models of effective practices and programs; (3) provision of technical assistance to States selected by the Children's Bureau; and (4) participation in program reviews and other Children's Bureau reviews.

This grant will be awarded as a Cooperative Agreement.

Background Information: Adoption is a critical service in achieving permanent homes for children with special needs who are in the public child welfare system. In the past decade, the Adoption Opportunities Program has, through grants and contracts, developed extensive resources, training materials and program models to address barriers to the adoption of these children.

Several national programs have been funded to assist agencies in improving services to children with special needs,

to adoptive families and to families who wish to adopt. The current National Resource Center for Special Needs Adoption (NRC), funded from 1985 to September 1993, provides training, technical assistance and consultation to improve adoption services for children with special needs. The National Adoption Information Clearinghouse, operating under a contract funded from September 1990 until September 1993, provides information to the public on all aspects of infant adoption and on the adoption of children with special needs. That contract will be competed again in FY 1993. And, the National Adoption Center, funded from 1982 to 1993, operates a national adoption telecommunications network which allows States, adoption exchanges and agencies, parent groups and national organizations to communicate with one another about adoption concerns and to register special needs children and prospective families.

These national programs, as well as demonstration grants that have been Federally supported, have successfully assisted States in placing greater numbers of children with adoptive families and, in some cases, have effected changes and improvements in statewide adoption systems. However, six program areas have been identified in the adoption legislation (Pub. L. 102–295, the Child Abuse Prevention and Treatment Act of 1992) as requiring additional attention; these (1) include minority children placements, (2) post-legal adoption services, (3) the placement of foster care children legally free for adoption, (4) national adoption recruitment, (5) the development of interdisciplinary approaches to meet the needs of children who are waiting for adoption and the needs of adoptive families and the (6) training of minority leaders. Most of the concerns addressed in the legislation are included in this announcement.

Minimum Requirements for Project Design: The National Resource Center for Special Needs Adoption should provide child welfare and adoption agencies with broader access to methods and techniques for expanding and improving special needs adoption services. Applicants must describe how they plan to undertake a project that has the capability to assist these agencies by conducting the following activities:

- The development of increased intrastate cooperation among relevant public and private sector agencies. This should include networking and cooperation with agencies providing mental health and developmental disabilities services to children and services for HIV positive, AIDS infected and drug affected children;
- The development of techniques for the early identification and follow-up of children for whom adoptive placement is the plan;
- The dissemination of models for increasing the rate of adoptive placements of children with special needs who are legally free for adoption, particularly older children;
- The provision of technical assistance, consultation and training for adoption providers on recruitment, preparation and post-legal adoption services for adoptive families, with a focus on minority families and infants abandoned by their parents; and,
- The development of interdisciplinary approaches to serving children awaiting adoption, families who wish to adopt, and adoptive families.

In order to compete successfully under this priority area, the applicant must also:

(1) Provide assurances that at least one key person from the project would attend the annual Adoption Opportunities Grantees meeting in Washington, DC; and,

(2) Document that the project would be staffed and implemented within 90 days of the notification of the grant award.

(3) Agree to enter into a cooperative agreement which will require the grantee to submit to the Children's Bureau for review and approval: workplans, lists of topics to be covered in technical assistance resources, syntheses, summaries and literature reviews; topics, times and places for conferences; topics for any collection of original data; and draft reports, conference agendas and other materials prior to their finalization and dissemination by the grantee.

The grantee shall also cooperate, to the extent that its budget will allow, with the Children's Bureau in meetings, briefings, or other forums to disseminate knowledge gained from its work with adoption providers.

Project Duration: The length of the project must not exceed 60 months.

Federal Share of Project Cost: The maximum Federal share is not to exceed $400,000 per 12-month budget period.

Matching or Cost Sharing Requirement: The grantee must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $400,000 per year in Federal funds must include a match of at least $133,333 per year (25 percent of the total yearly project cost).

Anticipated Number of Projects to be funded: It is anticipated that one project will be funded.

CFDA: 93.652 Adoption Opportunity Grants: Section 203(c) of the Child Abuse Prevention and Treatment and Adoption Act of 1978, as amended.

1.03 Leadership Development: Adoptive Parent Groups

Eligible Applicants: States, local government entities, public or private nonprofit licensed child welfare or adoption agencies or exchanges.

Purpose: To develop and support strong leaders for parent groups to enable them to be effective in providing support to and advocacy for families who adopt children with special needs.

Background: Through the years adoptive parents have aggressively promoted the adoption of children with special needs. As consumers of adoption services, these parents bring to the adoption field a special perspective both on the children to be served and on the agencies that serve them. They have been effective advocates for children and have challenged the term unadoptable by demonstrating that children with special needs can be placed with families of their own. Often the members of parent groups have come together out of a common need to help each other more effectively access the child welfare system for the purpose of adoption. Having experienced common problems, the members of parent groups may share information and insight and provide empathy and support for one another through regularly scheduled social and educational activities.

There are presently over 425,000 children in foster care in the United States and the numbers are growing. Thirty-seven thousand of these children have special needs and are waiting to be adopted. Over half of these waiting children are of minority heritage. Strong parent groups can play an important role promoting the adoption of these children through such activities as information and referral services, recruitment and orientation for prospective adoptive parents and work with social service agencies to support families following placement and legalization. ACYF recognizes the need to support the development of strong, effective leaders in order to support the establishment of new adoptive parent groups, strengthen existing groups and

advocate for the creation of needed services.

Minimum Requirements: In order to compete successfully under this priority area, the applicant should:

- Document with letters of commitment that the applicant has the capability to work with local or State adoptive parent groups.
- Describe the process that would be used to identify and select parents in the adoption community for leadership development and the number of leaders that will be developed.
- Describe the process and training curriculum (or training design) that would be used to train parent leaders; and describe the specific skills that would be developed.
- Describe how the applicant would reach out to the minority adoption community to assure its participation in the leadership development program.
- Describe how the applicant would provide technical assistance and support to group leaders, reinforcing the newly developed leadership skills, in building new parent groups or strengthening existing groups.
- Provide assurances that at least one key staff person would attend the annual three-day Adoption Opportunities grantees' meeting in Washington, D.C.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $75,000 per 12-month budget period.

Matching or Cost Sharing Requirements: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $75,000 per year in Federal funds must include a match of at least $25,000 per year (25 percent of the total yearly project cost of $100,000).

Anticipated Number of Projects To Be Funded: It is anticipated that three projects will be funded.

CFDA: 93.652 Adoption Opportunity Grants: Section 203(c) of the Child Abuse Prevention and Treatment and Adoption Act of 1978, as amended.

1.04 Increase Adoptive Placements of Minority Children

Eligible Applicants: States, local government entities, public or private non-profit licensed child welfare or adoption agencies, and incorporated adoptive parent groups and community-based organizations with experience in working with minority populations. Given limited funds, and in order to generate and financially support the widest possible variety of issues and approaches, priority will be given to applicants which have not been funded under this priority area in previous fiscal years. However, previously funded applicants under this priority area will not be precluded from receiving a grant.

Purpose: To develop programs designed to increase the adoptive placement of minority children who are in foster care and have the goal of adoption, with a special emphasis on the recruitment of minority families and adoptive placements for minority children.

Background Information: The Adoption Opportunities legislation, as amended by Public Law 102–295, places an emphasis upon the recruitment of minority families and authorizes funds for demonstration projects for the recruitment of families to adopt waiting minority children.

It is estimated that approximately half of the 30,000 children currently free for adoption and awaiting placement are minority children. Some of these children are older, have disabilities and may wait long periods of time before they are placed with adoptive families.

A Child Welfare League of America study entitled "The State of Adoption in America" reports four major issues cited by public agencies as being critical impediments to timely adoptive placement: lack of minority parents for waiting minority children; lack of agency staff and funds; lack of parents willing to adopt children with special needs; and delays in the termination of parental rights. ACYF is aware that there must be a continuous focus on the adoption of minority children and has funded a number of programs designed to specifically recruit minority families and to place minority children. Unfortunately, however, only a few of these programs have continued beyond Federal funding.

During recent years States have developed and used a variety of new strategies to recruit prospective adoptive families for children with special needs. Among the most successful models were:

- One Church, One Child (which developed a partnership between the Black church and the State social service agency for recruiting families for Black children); and
- Friends of Black Children (the State social service agency for recruiting families for Black children).

Each of these models required very active community participation in recruitment and often in family preparation. These recruitment models were particularly successful in the recruitment of Black families and the placement of Black children. States that adopted these models reported a significant increase in the number of families who responded to media and other presentations on adoption.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Identify and describe existing barriers to minority adoption in the locale where the project would be implemented; the number of families that would be recruited; and the number of children that would be placed.
- Describe the innovative methods that would be employed to recruit and prepare minority families (including single applicants) in a timely manner in order to retain recruited families.
- Provide assurances that the program would not require payment of fees by families for the adoption process.
- Describe how training in cultural sensitivity would be provided to all relevant staff to increase their effectiveness in serving minority children and families.
- Provide for a third party evaluation which would assess the project's effectiveness in achieving the desired objectives and would test its ability to provide services to prospective adoptive families through the completion of the adoption.
- Document how the program would be continued beyond Federal funding as part of the agency's ongoing program and describe the specific steps which would be taken to accomplish this.
- Provide evidence of licensure.
- Provide assurances that at least one key person from the project would attend the annual three-day Adoption Opportunities Grantees Meeting in Washington, DC.
- Describe the report and/or other products that would be developed under the project, including the types of information that would be presented, and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.
- Provide assurances and document that the project would be staffed and implemented within 90 days of the notification of the grant award.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share of the project is

not to exceed $100,000 per 12-month budget period.

Matching or Cost Sharing Requirement: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 per year in Federal funds must include a match of at least $33,333 per year (25 percent of the total yearly project cost of $133,333).

Anticipated Number of Projects to be Funded: It is anticipated that four projects will be funded.

CFDA: 93.652 Adoption Opportunity Grants: Section 203(c) of the Child Abuse Prevention and Treatment and Adoption Act of 1978, as amended.

1.05 Adoptive Placement of Foster Children

Eligible Applicants: Eligibility is limited to State social service agencies. Given limited funds, and in order to generate and financially support the widest possible variety of issues and approaches, priority will be given to applicants which have not been funded under this priority area in previous fiscal years. However, previously funded applicants under this priority area will not be precluded from receiving a grant.

Purpose: To develop programs which will assist States in their efforts to increase the placement of foster children legally free for adoption according to a pre-established plan and goals for improvement.

Background Information: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended, authorizes the funding of grants to States to improve adoption services for the placement of special needs children legally free for adoption. Children in foster care who are free for adoption, particularly children with special needs, do not always move smoothly through the child welfare system into placement with a permanent family.

States have received grants to make systemic changes in their adoption programs; to provide computer hardware, software and fees for membership in the National Adoption Exchange's Network; and to develop a consortium of nine States with large numbers of children in care in order to share knowledge to improve and enhance their special needs adoption programs and to increase the placement of children residing in those States. More than half of the States have received grants to improve adoption services; however, only a small number have been able to sustain these efforts because of limited funds, staffing problems and the fact that adoption services are not viewed as a priority by many States.

Increasingly, children entering foster care have more complex problems which require more intensive services than in the past. Permanent families must be continuously recruited and prepared to parent the growing population of children who cannot return to their birth families. Supportive services must be added or improved so that the children in foster care who are legally free for adoption can move into adoptive placement in a timely manner. This will require collaborative efforts with the court system to terminate parental rights. Further, agencies must commit resources for the ongoing support of adoptive families not only at placement, but also after legalization of the adoption. Past projects have demonstrated that greater improvements in placing these children are achieved when permanent plans are made and carried out very early in the placement; when there are sufficient trained and experienced staff; and when there are available resources and administrative commitment to adoption and to coordinated community-based efforts.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Identify and verify the number of foster care children in the area to be served who are legally free and waiting for adoptive placement.
- Provide and verify the rate of placement of foster care children placed in adoption in the year preceding the application (the rate of placement is the number of children placed divided by the number of children waiting for adoption).
- Describe the methods to be employed to increase the rate of placement of foster care children into adoption and the goals for improvement to be achieved during the period of the grant.
- Describe how the proposed improvements, if successful, would be continued beyond the period of Federal support.
- Propose and describe an evaluation component which would focus on the innovations used to improve the placement of children who are legally free for adoption and which would address the successes and failures of the initiative. The evaluation should include the collection and analysis of data to determine placement rates and the types of clients served (e.g., waiting children, prospective adoptive families). Statistics should be collected to determine the availability of adoptive families during the program period. The evaluation should also include descriptive information on the processes and procedures used in implementing the project. This information should be used to assess placement rates and the success or failure of the innovative program methodologies used.
- Provide assurances that at least one key staff person would attend the annual three-day Adoption Opportunities Grantees Meeting in Washington, DC.
- Describe the report and/or other products that would be developed under the project, including the types of information that would be presented, and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of the project must not exceed 12 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $100,000 per 12-month budget period.

Matching or Cost Sharing Requirement: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 per year in Federal funds must include a match of at least $33,333 per year (25 percent of the total yearly project cost of $133,333).

Anticipated Number of Projects to be Funded: It is anticipated that three projects will be funded.

CFDA: 93.652 Adoption Opportunity Grants: Section 203(c) of the Child Abuse Prevention and Treatment and Adoption Act of 1978, as amended.

1.06 Post-Legal Adoption Services

Eligible Applicants: States, local government entities, and public or private nonprofit licensed child welfare or adoption agencies. Given limited funds, and in order to generate and financially support the widest possible variety of issues and approaches, priority will be given to applicants which have not been funded under this priority area in previous fiscal years. However, previously funded applicants

under this priority area will not be precluded from receiving a grant.

Purpose: To develop or replicate projects which will strengthen the provision of post-legal adoption services for families who have adopted children with special needs. The services provided shall supplement, not supplant, services supported by any other funds available to the applicant for the same general services.

Background Information: The Adoption Opportunities legislation, as amended by Public Law 102–295, authorizes funds for increased post-legal adoption services. Recognition of special issues in adoption in the past decade has led adoption professionals to reconsider the concept that agency services to adoptive families end with the legal consummation of the adoption. Historically, once the adoption was legally consummated, the newly-formed family was to be considered the same as any other family. There is now acknowledgement that adoption is a life-long process and that service providers need to understand the unique interpersonal dynamics of adoption in order to provide effective post-legal adoption services (those provided after the legalization of the adoption) to families who seek assistance.

During the past four years, ACYF has funded 54 projects to provide post-legal adoption services for families who have adopted children with special needs. These projects are located in Alaska, Alabama, California, Connecticut, the District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New York, North Carolina, Ohio, Oregon, Pennsylvania, Puerto Rico, South Carolina, Tennessee, Texas, Utah, and Washington. In addition, a Post-Legal Adoption Consortium was established with awards to the following States: Arizona, Virginia, Illinois, Michigan, Wisconsin and Washington. The Consortium is designed to assist States to develop and institutionalize post-legal adoption services, to review successful post-legal adoption practices, projects and laws, and to make post-legal adoption a core service of the agency. Information on these projects can be obtained from the National Adoption Information Clearinghouse.

Funds awarded under this priority area in FY 1993 will support the incorporation of post-legal adoption services in the agency's programs, the expansion of the post-legal adoption services in communities where such services already exist and the development of such services in communities where they not yet exist. Support will also be provided for the development of additional models of service delivery.

Services funded under this priority area shall be provided to families who have adopted children with special needs. Other variants of post-legal adoption services, such as searches for adult adoptees and services to teen mothers who choose adoption for their children, may also be included.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Propose to provide services such as respite care; individual, group and/or family counseling; case management; training of mental health professionals and staff of public agencies and of private, nonprofit child welfare and adoption agencies licensed by the State to provide adoption services; and assistance to adoptive parents, adopted children and siblings of adopted children.
- Describe the models that would be developed or replicated and the services that would be provided.
- Describe the existing post-legal adoption services, if any; the need for expanded or new services; and plans for the development, implementation, and institutionalization of enhanced and new services.
- Describe how the proposed project would build upon the existing literature and knowledge base related the post-legal adoption services.
- Provide specific written commitments from collaborating or cooperating agencies, if any.
- Document and describe how the project would be an ongoing part of the agency's or organization's program following the termination of Federal funding and the steps the applicant would take to accomplish this.
- Provide assurances that the project would be staffed and implemented within 90 days of the notification of the grant award.
- Provide assurances that at least one key person from the project would attend the annual three-day Adoption Opportunities grantees meetings in Washington, DC.

Project Duration: The length of the project must not exceed 24 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $100,000 per 12-month budget period.

Matching or Cost Sharing Requirements: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $100,000 per year in Federal funds must include a match of at least $33,333 per year (25 percent of the total yearly project cost of $133,333).

Anticipated Number of Projects to be Funded: It is anticipated that seven projects will be funded.

CFDA: 93.652 Adoption Opportunity Grants: Section 203(c) of the Child Abuse Prevention and Treatment and Adoption Act of 1978, as amended.

1.07 Professional Education for Public Child Welfare Practitioners

Eligible Applicants: Institutions of higher education with accredited social work programs or other bachelor or graduate level programs leading to a degree relevant to work in child welfare. Given limited funds, and in order to generate and financially support the widest possible variety of issues and approaches, priority will be given to applicants which have not been funded under this priority area or the Interdisciplinary Training Programs for Child Welfare priority area in previous fiscal years. However, previously funded applicants under this priority area will not be precluded from receiving a grant.

Purpose: To develop and/or strengthen the training of public child welfare staff through the provision of critical information and the development of skills which impact on the problems confronting public child welfare agency clients and through the provision of specific competency-based child welfare training. Trainees will be enrolled as bachelor or graduate level students at schools with accredited social work programs or other bachelor or graduate level programs leading to a degree relevant to work in child welfare.

Background Information: Because of the increasingly complex nature of the problems affecting vulnerable children and their families, the public child welfare services delivery system is hard pressed to hire and retain staff with the needed competencies. Recent university training programs for social work have been weak in two major areas: First, many curricula have included few child welfare courses. This limits the value of these graduates to child welfare agencies in terms of being able to meet the complex needs of the client populations served by these agencies. Second, opportunities for students to obtain traineeships in public child welfare agencies are very limited and

often are unappealing, in part because of the limited number of professional agency staff to supervise these students. This reduces the value of the preparation students receive for any subsequent employment in these agencies. It also reduces the likelihood that they will seek employment in public agencies.

Competency-based child welfare training is training to learn the specific knowledge and skills necessary to provide child welfare services in a public child welfare agency. Competency-based training emphasizes the practical realities which public child welfare workers confront in their day-to-day work. Staff need to know how to deal with the multiple problems of clients affected by poverty, to encourage and assist clients to be responsible parents, to reunify families, to cope with the results of drug use and to deal with complex court procedures.

Minimum Requirements for Project Design: In order to complete successfully under this priority area, the applicant should:

- Describe who the students would be (bachelor and/or graduate level); how many are expected to be trained over the life of the project; the criteria for the selection of students; how the students would be recruited; and the strategy which would be used to insure that students work in public child welfare after graduation.
- Describe the curriculum, including course titles, that would be utilized. Indicate which are child welfare courses.
- Describe the strategies that would be used to place students in public child welfare agencies as part of their training. Specify the type of supervision which would be provided, including the professional qualifications of the supervisory staff.
- Describe the strategies which would be used to recruit trainees, with a particular emphasis on racial and ethnic minorities.
- Include a plan for evaluation which, at a minimum, includes measures of effectiveness of the training and a follow-up of students to determine their subsequent employment in public child welfare agencies.
- Describe the final report and/or other products, such as curricula or training modules, that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.
- Describe plans for offering traineeships with the grant funds and the criteria to be used in awarding traineeships. A minimum of two-thirds of the funds shall be used for traineeships.
- Provide assurances that at least one key staff person from the university and one key staff person from the public child welfare agency would jointly attend a one-day annual meeting in the HHS Regional Office shortly after the award of the grant as well as a two- to three-day annual grantee meeting in Washington, DC.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $75,000 per 12-month budget period. A traineeship may not exceed $7,500 per student, per budget year.

Matching or Cost Sharing Requirement: No matching funds are required for the portion of the budget which pays for traineeships. Grantees must provide at least 25 percent of the total cost of grant activities other than traineeships. The total approved cost of these activities is the sum of the ACYF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $75,000 in Federal funds for non-traineeship activities (based on an award of $25,000 per budget period) must include a match of at least $25,000 (25 percent of the total cost for these activities). Because this is a training grant, indirect costs for these training projects shall not exceed 8 percent.

Anticipated Number of Projects To Be Funded: It is anticipated that nine projects will be funded.

CFDA: 93.648 Child Welfare Services Training Grants: Section 426 of the Social Security Act, as amended.

1.08A Temporary Child Care for Children With Disabilities and Chronically Ill Children, and 1.08B Crisis Nurseries

Eligible Applicants: State agencies designated by the Governor of the State to carry out programs funded under the Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986, as amended (42 U.S.C. 5117a and 5117b). Other State agencies carrying out similar programs are ineligible.

States, including those currently receiving financial assistance under these programs, may apply under one or both priority areas described below. A separate application, however, must be submitted under each priority area. Applications must clearly indicate whether they are being submitted under 1.08A, Temporary Child Care for Children With Disabilities and Chronically Ill Children, or 1.08B, Crisis Nurseries.

Purpose: To support States in their efforts to assist private and public agencies in developing two types of services:

- In-home or out-of-home temporary non-medical child care (respite care) for children with disabilities and children with chronic or terminal illnesses, including children with AIDS or AIDS-related conditions (priority area 1.08A); and
- Crisis nurseries for abused and neglected children, children at risk of abuse and neglect, or children in families receiving protective services (priority area 1.08B).
- Special attention should be paid in both priority areas to the needs of drug-affected infants.

Background Information: The Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986 (the Act) authorizes grants to States to assist public and private agencies in developing temporary child care or respite care services for children with disabilities and crisis nurseries for children who are abused or neglected, at risk of abuse and neglect, or in families receiving protective services. These programs are intended to maintain and support the family unit and strengthen the parent-child bond. Programs were funded under this Act in fiscal years 1988, 1989, 1990 and 1991. Additional funding was appropriated in FY 1990 for the support of temporary child care and crisis nurseries programs which place special emphasis on serving drug affected children and families. Also, in FY 1992, ACYF funded, through a limited competition, final continuation grants for projects originally funded in FY 1990.

42 U.S.C. Section 5117a: Temporary Child Care for Children With Disabilities and Chronically Ill Children (Priority Area 1.08A)

The purpose of establishing a temporary child care program (also known as respite care) for children with disabilities or who are chronically or terminally ill is to alleviate social, economic, and financial stress among the families of such children. Such care provides the families or primary caregivers with periods of temporary relief from the pressures of the demanding child care routine, thus preventing severe family stress.

The Act authorizes temporary child care programs for children with disabilities and requires applicants seeking temporary child care funds to

define disabilities using the definition in the Individuals with Disabilities Education Act:

* * * The term children with disabilities means children—(A)(i) with mental retardation, hearing impairments including deafness, speech or language impairment, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and who by reason thereof.

(ii) Need special education and related services.

(B) The term children with disabilities for children aged 3 to 5, inclusive, may at a State's discretion, include children—

(i) Experiencing developmental delays, as defined by the state and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

(ii) Who, by reason thereof; need special education and related services * * * (Pub. L. 102–119).

The following components may be included in temporary child care or respite care projects:

- 24-hour services;
- Access to primary medical services;
- Referral to counseling/therapy services;
- Staff training, including child abuse/neglect reporting responsibilities; and
- Public awareness programs.

42 U.S.C. 5117b: Crisis Nurseries (Priority Area 1.08B)

A crisis nursery is defined in section 42 U.S.C. section 5117c(d) to mean a center providing temporary emergency services and care for children. Crisis nurseries are child care facilities which protect children by providing a safe environment at a time when the chances of neglect or abuse in the home are increased.

The programs offer parents the option of time out as a preventive measure in reducing the incidence of child maltreatment. They are designed to: (1) Develop a safe environment as a resource for children at risk of abuse; (2) deliver nonpunitive, nonthreatening services as a resource to caregivers of at-risk children; and (3) utilize existing community-based services to further diminish the potential for the maltreatment of children in families experiencing crisis. Services funded under 42 U.S.C. section 5117b must be provided without fee and may be provided for a maximum of 30 days in any year.

Crisis nurseries must also provide referral to support services.

The following components may be included in crisis nursery programs:

- 24-hour services;
- Referral to counseling/therapy services, including out-of-home placement (when appropriate);
- Access to primary medical services;
- Staff training, including child abuse/neglect reporting responsibilities; and
- Public awareness programs.

Minimum Requirements for Project Design: In order to successfully compete under one or both of these priority areas, the applicant should:

- Provide a letter addressed to the Commissioner, Administration on Children, Youth and Families and signed by the Governor, which certifies that the State agency applying for funding is the State agency designated to carry out programs funded under 42 U.S.C. 5117a and 5117b, Temporary Child Care for Children With Disabilities and Crisis Nurseries Act.
- Provide documentation of the State's commitment to develop a State plan for coordination among agencies carrying out programs and activities provided by the State pursuant to a temporary child care grant under 42 U.S.C. 5117a. (Section 5117c(a)(1)(A)(v))
- Describe collaborative efforts with programs funded through the Child Care and Development Block Grant.
- Describe the proposed State program to assist private and public agencies or organizations in providing in-home or out-of-home temporary, nonmedical care to children with disabilities and children with chronic or terminal illnesses, including drug-related conditions and children with AIDS or AIDS-related conditions, or crisis nurseries for abused and neglected children.

(1) If the State has previously received an award under this statute, describe the types of services provided and the geographical sites served utilizing these funds.

(2) If the funds being requested would be used to enhance services previously or currently supported under this statute, substantial detailed documentation must be provided such as the existence of waiting lists or an increase in the population of the geographical area.

(3) If the funds being requested would be used to expand services to geographical sites not previously or currently supported under this statute, describe the process that was used or will be used to select the sites. Particularly encouraged are sites which would serve homeless families, families living in public housing projects or American Indian communities and/or other minority families.

- Describe the services to be provided, the agencies and organizations that would provide the services and the criteria that would be employed in the selection of children and families for participation in the project. (42 U.S.C. 5117c(a)(1)(A)(i))
- Describe State plans for the submission of an annual report to the Secretary evaluating the programs that are funded, including information on costs, number of participants, impact on family stability, incidence of child abuse and neglect and such other information as the Secretary may require. Describe fully how this requirement would be met and specifically describe how the data required to provide this evaluation and information would be collected. (42 U.S.C. 5117c(C))
- Describe a plan for dissemination of the results of the programs and projects funded under the Act. (42 U.S.C. 5117c(a)(1)(A)(iii))
- Discuss plans for continuation of the program after the federally funded project period has ended.
- Provide assurances and adequate budget funds to support at least one key person from the State agency and one key person from each service provider site receiving funds from the grant to attend an annual 2–3 day conference in Washington, DC.
- Provide assurances that travel to these conferences will not be subject to any limitations on travel which may be imposed by the State on its employees.
- Provide the following assurances as required by statute:

(1) That not more than 5 percent of the funds made available under each section of the Act would be used for State administrative costs.

(2) That projects funded by the State would be of sufficient size, scope and quality to achieve the objectives of the program.

(3) That, in the distribution of funds under the Temporary Child Care, program, the State would give priority consideration to agencies and organizations which have experience in working with disabled, terminally ill, and chronically ill children and their families and which serve communities which demonstrate the greatest need for such services.

(4) That, in the distribution of funds under the Crisis Nurseries program, the State would give priority consideration to agencies and organizations with experience in working with abused or

neglected children and their families; in working with children at high risk of abuse and neglect and their families; and in serving communities which demonstrate the greatest need for such services.

(5) That Federal funds made available under these programs would be used to supplement and, to the extent practicable, increase the amount of State and local funds available for these purposes, and in no case supplant such State or local funds.

(6) That the State would use the definition of children with disabilities found in Public Law 102–119, the Individuals with Disabilities Education Act, in implementing programs under the Temporary Child Care program.

(7) That all agencies and organizations funded under the Temporary Child Care program would provide child care only on a sliding fee scale with hourly and daily rates.

(8) That the services provided under the Crisis Nurseries program would be provided without fee and for a maximum of 30 days in any year.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $200,000 for the first 12-month budget period or a maximum of $600,000 for a 3-year project period.

Matching or Cost Sharing Requirement: Grantees must provide at least 25 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $600,000 in Federal funds must include a match of at least $200,000 (25 percent of the total project cost of $800,000).

Anticipated Number of Projects to be Funded: It is anticipated that approximately 24 projects, 12 under each priority area, 1.08A and 1.08B, will be funded.

CDFA: 93.656 Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986, as amended, Title II, Public Law 102–295, 42 U.S.C. 5117a, 5117b, 5117c.

Part III—Instructions for the Development and Submission of Applications

This Part contains information and instructions for submitting applications in response to this announcement. Application forms are provided along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in part II.

A. Required Notification of the State Single Point of Contact

The Adoption Opportunities Program and the Temporary Child Care for Children with Disabilities and Crisis Nurseries Program are covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories, except, Alabama, Alaska, Idaho, Kansas, Louisiana, Minnesota, Nebraska, Oklahoma, Oregon, Virginia, Pennsylvania, Washington, American Samoa and Palau, have elected to participate in the Executive Order process and have established State Single Point of Contact (SPOCs). Applicants from these 14 jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Room 341–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

A list of the Single Points of Contact for each State and Territory is included as Appendix B of this announcement.

B. Deadline for Submission of Applications

Deadline: Applications shall be considered as meeting the announced deadline if they are either:

1. Received on or before the deadline date at: Department of Health and Human Services Administration for Children and Families Division of Discretionary Grants, Room 341–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

2. Sent on or before the deadline date and received by the granting agency in time for the independent review under DHHS GAM Chapter 1–62. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private Metered postmarks shall not be acceptable as proof of timely mailing.

Late Applications: Applications which do not meet the criteria stated above are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc, or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

C. Instructions for Preparing the Application and Completing Application Forms

The SF 424, 424A, 424B, and certifications have been reprinted for your convenience in preparing the application. See Appendix A. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

Please prepare your application in accordance with the following instructions:

1. *SF 424 Page 1, Application Cover Sheet*

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

Item 1. Type of Submission—Preprinted on the form.

Item 2. Date Submitted and Applicant Identifier—Date application is submitted to ACYF and applicant's own internal control number, if applicable.

Item 3. Date Received by State—State use only (if applicable).

Item 4. Date Received by Federal Agency—Leave blank.

Item 5. Applicant Information—Legal Name—Enter the legal name of the applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

Organizational Unit—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

Address—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

Name and telephone number of the person to be contacted on matters involving this application (give area code)—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. Employer Identification Number (EIN)—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. Type of Applicant—Self-explanatory.

Item 8. Type of Application—Preprinted on the form.

Item 9. Name of Federal Agency—Preprinted on the form.

Item 10. Catalog of Federal Domestic Assistance Number and Title—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title, as indicated in the relevant priority area description.

Item 11. Descriptive Title of Applicant's Project—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. Areas Affected by Project—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. Proposed Project—Enter the desired start date for the project and projected completion date.

Item 14. Congressional District of Applicant/Project—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter 00.

Item 15. Estimated Funding Levels—In completing 15a through 15f, the dollar amounts entered should reflect, for a 17 month or less project period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost-sharing or matching funds. The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part II, Sections E and F, and the specific priority area description.

Item 15f. Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. Is Application Subject to Review By State Executive Order 12372 Process? Yes.—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part III. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application. If there is a discrepancy in dates, the SPOC may request that the Federal agency delay any proposed funding until September 1993.

Item 16b. Is Application Subject to Review By State Executive Order 12372 Process? No.—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. Is the Applicant Delinquent on any Federal Debt?—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Catagories of debt include audit disallowances, loans and taxes.

Item 18. To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. Typed Name of Authorized Representative, Title, Telephone Number—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. Signature of Authorized Representative—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. Date Signed—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal

funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 17 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers (1) the total project period if the proposed project period is 17 months or less or (2) the first year budget period if the proposed project period exceeds 17 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate itemized budget justification for each line item is required. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, Other.

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total cost of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, Other.

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For State and local governments, including Federally recognized Indian Tribes, equipment is non-expendable tangible personal property having a useful life of more than two years and an acquisition cost of $5,000 or more per unit. For all other applicants, the threshold for equipment is $500 or more per unit. The higher threshold for State and local governments became effective October 1, 1988, through the implementation of 45 CFR Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, Other.

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements. Applicants who anticipate procurements that will exceed $5,000 (non-governmental entities) or $25,000 (governmental entities) and are requesting an award without competition should include a sole source justification in the proposal which at a minimum should include the basis for contractor's selection, justification for lack of competition when competitive bids or offers are not obtained and basis for award cost or price.

(Note: Previous or past experience with a contractor is not sufficient justification for sole source.)

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as miscellaneous and honoraria are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter none. Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with HHS requirements., When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant. In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total

indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b) from (a). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement. Applicants subject to limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled Totals. In-kind contributions are defined in 45 CFR, Part 74.51 and 45 CFR Part 92.3, as property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required *Federal* funds for the second budget period (months 13 through 24) under column (b) First. If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under (c) Second. Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. Columns (d) and (e) would be used in the case of a 60 month project.

Section F—Other Budget Information.

Direc Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 17 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. *Project Summary Description*

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the proposal. It should describe the objectives of the projects, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project abstract. It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

At the bottom of the page, following the summary description, type up to 10 key words which best describe the proposed project, the service(s) involved and the target population(s) to be covered. These key words will be used for computerized information retrieval for specific types of funded projects.

4. *Program Narrative Statement*

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in part II.

The narrative should provide information concerning how the application meets the evaluation criteria (see section C, part II), using the following headings:

(a) *Objectives and Need for Assistance;*

(b) *Results and Benefits Expected;*

(c) *Approach;* and

(d) *Staff Background and Organization's Experience.*

The specific information to be included under each of these headings is described in section C of part II, Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½" x 11" plain white paper, with 1" margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with Objectives and Need for Assistance as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½ x 11" sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed materials along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. *Organizational Capability Statement*

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Part IV—Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities. Copies of these assurances/certifications are reprinted at the end of this announcement and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities certifications.

For research projects in which human subjects may be at risk, a Protection of Human Subjects Assurance may be required. If there is a question regarding the applicability of this assurance, contact the Office for Research Risks of the National Institutes of Health at (301) 496–7041.

D. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies. Applications for different priority areas are packaged separately;
—Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);
—Application length does not exceed 60 pages, unless otherwise specified in the priority area description.

A complete application consists of the following items in this order:
—Application for Federal Assistance (SF 424, REV 4–88);
—Budget Information—Non-Construction Programs (SF 424A, REV 4–88);
—Budget justification for Section B—Budget Categories;
—Table of Contents;
—Letter from the Internal Revenue Service to prove non-profit status, if necessary;
—Copy of the applicant's approved indirect cost rate agreement, if appropriate;
—Project summary description and listing of key words;
—Program Narrative Statement (See Part II, Section C);
—Organizational capability statement, including an organization chart;
—Any appendices/attachments;
—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88);
—Certification Regarding Lobbying; and
—Certification of Protection of Human Subjects, if necessary.

E. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application. If acknowledgment of receipt of your application is not received within eight weeks after the deadline date, please notify ACYF by telephone at (202) 690–7016.

Dated: July 8, 1993.

Joseph A. Mottola,

Acting Commissioner, Administration on Children, Youth and Families.

BILLING CODE 4184–01–P

APPENDIX A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (*give city, county, state, and zip code*):	Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration

D. Decrease Duration Other (*specify*):

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)—For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)—*For new applications,* leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the Duly Authorized Representative of the Applicant I Certify That the Applicant

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C., 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

TITLE

APPLICANT ORGANIZATION

DATE SUBMITTED

State Single Points of Contact

Arizona

Mrs. Janice Dunn, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Mr. Joseph Gillesbie, Manager, State Clearinghouse, Office of Intergovernmental Service, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 371–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Connecticut

Under Secretary, ATTN: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, 80 Washington Street, Hartford, Connecticut 06106–4459, Telephone (203) 566–3410

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Ms. Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue, NW., Washington, DC 20004, Telephone (202) 727–9111

Florida

Ms. Karen McFarland, Director, Florida State Clearinghouse, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 488–8114

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street, S.W., Atlanta, Georgia 30334, Telephone (404) 656–3855

Hawaii

Mr. Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development,

Office of the Governor, State Capitol—Room 406 Honolulu, Hawaii 96813, Telephone (808) 548–5893, FAX (808) 548–8172

Illinois

Mr. Tom Berkshire, State Single Point of Contact, Office of the Governor, State of Illinois, Springfield, Illinois 62706, Telephone (217) 782–8639

Indiana

Mr. Frank Sullivan, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ms. Debbie Anglin, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

State Single Point of Contact, ATTN: Ms. Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

State Single Point of Contact, ATTN: Ms. Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Mr. Milton O. Waters, Director of Operations, Michigan Neighborhood Builders Alliance, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7111

Please direct correspondence to: Manager, Federal Project Review, Michigan Department of Commerce, Michigan Neighborhood Builders Alliance, P.O. Box 30242, Lansing, Michigan 48909, Telephone (517) 373–6223.

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, Office of Policy Development, 421 West Pascagoula Street, Jackson, Mississippi 39203, Telephone (601) 960–4280

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809, Room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Montana

Ms. Deborah Stanton, State Single Point of Contact, Intergovernmental Review Clearinghouse, c/o Office of Budget and Program Planning, Capitol Station, Room 202—State Capitol, Helena, Montana 59620, Telephone (406) 444–5522

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, ATTN: Mr. John B. Walker, Clearinghouse Coordinator, Telephone (702) 687–4420

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, ATTN: Intergovernmental Review Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613.

Please direct correspondence and questions to: Nelson S. Silver, State Review Process, Division of Local Government Services, CN 803, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025.

New Mexico

Aurelia M. Sandoval, State Budget Division, Department of Finance & Administration, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Intergovernmental Relations, N.C. Department of Administration, 116 W. Jones Street, Raleigh, North Carolina 27611, Telephone (919) 733–0499

North Dakota

Mr. William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Telephone (701) 224–2094

Ohio

Mr. Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Mr. Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Room 477, Columbia, South Carolina 29201, Telephone (803) 734–0493

South Dakota

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Ms. Carolyn Wright, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, IGA Relations, 101 South Webster Street, P.O. Box 7864, Milwaukee, Wisconsin 53707, Telephone (608) 266–1741

Please direct correspondence and questions to: Mr. William C. Carey, Section Chief, Federal-State Relations Office, Wisconsin Department of Administration, Telephone (608) 266–0267.

Wyoming

Ms. Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Patria Custodio/Israel Soto Marrero, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, No. 32 & 33 Kongens Gade, Charlotte Amalie, V.I. 00802, Telephone (809) 774–0750

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State of local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions. "without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

BILLING CODE 4184–01–P

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

[FR Doc. 93–16630 Filed 7–14–93; 8:45 am]

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federal register

Thursday
July 15, 1993

Part VII

Department of Defense

Department of the Army

Description of Procedures Governing Disqualification and Nonuse of Carriers of DOD Traffic; Notices

DEPARTMENT OF DEFENSE

Department of the Army

Description of Procedures Governing Disqualification and Nonuse of Carriers of DOD Traffic

AGENCY: Military Traffic Management Command (MTMC), DOD.

ACTION: Notice of revised procedures.

SUMMARY: This submission incorporates revisions to MTMC Regulation No. 15–1, C1, 12 December 1984, Procedure for Disqualifying and Placing Carriers in Nonuse.

EFFECTIVE DATE: Written comments must be received on or before August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Robbie Randolph or Mr. Cullen Hutchinson, Headquarters, Military Traffic Management Command, Assistant Deputy Chief of Staff for Operations-Quality, ATTN: MTOE–QE, 5611 Columbia Pike, Falls Church, VA 22041–5050, telephone (703) 756–1292.

SUPPLEMENTARY INFORMATION: This notice if given for the purpose of informing of revisions to MTMC Regulation No. 1 5–1 which prescribes MTMC procedures governing disqualification or nonuse of carriers, agents, company/corporate officers or affiliates contracting with MTMC for transportation of DOD sponsored freight, personal property or passengers and providing the opportunity for public comment. Pursuant to the authority of section 302 of the Small Business and Federal Procurement Competition Enhancement Act of 1984, 41 U.S.C. 4 18b, MTMC has determined that, because of urgent and compelling circumstances, the proposed revised regulation will be implemented on a temporary basis pending final approval.

Proposed Regulation

Department of the Army, Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, VA 22041–5050

MTMC Regulation 15–1, C2

Procedure for Disqualifying and Placing Carriers in Nonuse

Supplementation of this regulation is prohibited. Comments and suggested improvements may be submitted to HQMTMC (ADCSOPS–Quality) on DA Form 2028. (Recommended Changes to Publications and Blank Forms)

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This regulation supersedes MTMCR 15–1, C1, 12 December 1984.

1. Purpose

This regulation prescribes Military Traffic Management Command (MTMC) procedures governing disqualification or nonuse of carriers, agents, company/corporate officers or affiliates contracting with MTMC for transportation of Department of Defense (DOD) sponsored freight, personal property or passengers. These procedures will be followed when HQMTMC decides to take action to disqualify or place a carrier in nonuse, or when MTMC Area Commanders, or designated MTMC representatives, act to disqualify or place a carrier in nonuse or recommend to an area commander or HQMTMC that such action be taken.

2. Authority

The provisions of this regulation are based on the authority contained in 5 USC 301 and 10 USC 2311 as they relate to the handling of DOD transportation requirements by qualified carriers and DOD Directives 5158.4, 4500.9, 4500.34, DOD Regulation 4500.34–R, and United States Transportation Command Regulation 75–1. The military and public contracts exceptions of section 553(a)(1)(2) of 5 USC apply to this regulation. This regulation is separate and distinct from the authority of installation Commanders and Installation Transportation Officers (ITO) to place carriers in a nonuse status pursuant to the Defense Traffic Management Regulation, DTMR, AR 55–355, and the Personal Property Traffic Management Regulation, PPTMR, DOD 4500.34–R. Pursuant to DOD Directive 4500.9, it is the policy of DOD to obtain transportation services from responsive, responsible, commercial carriers providing satisfactory service to meet the needs of the DOD which include optimum responsiveness, efficiency, and economy at the overall best value to the Government. The procedures contained herein are designed to ensure that the Government's best interests are served and that this policy is achieved.

3. Definitions

a. Disqualification is the act, as a result of a Carrier Review Board (CRB), of excluding a carrier from participating in transporting DOD freight, personal property, or passengers because of unsatisfactory service. Disqualification may be for specific services or routes or for all services or routes. It will normally not exceed a maximum period of 2 years. MTMC Area commanders' authority to disqualify is limited to a 180-day period.

b. A CRB is a proceeding which affords carriers an opportunity to present information and rebut information, resulting in a decision based on the administrative record.

c. Nonuse, as used in this regulation, is the act of excluding a carrier from participating in the DOD freight, personal property, or passenger transportation programs for reasons such as those found in paragraph 5.b. which indicate operational or administrative deficiencies or violations pertaining to requirements necessary to participate in DOD transportation programs (e.g., issues involving safety, security, ethics, regulatory and statutory compliance, etc.), as opposed to specific incidences of unsatisfactory performance. The period of nonuse will last until the carrier furnishes evidence that the conditions causing the nonuse status have been remedied or removed.

d. Temporary non-use means placing a carrier in immediate nonuse pending a decision by a CRB convened in accordance with this regulation. Temporary non-use shall terminate with the decision of the review board which will normally be held within 30 days after the carrier was placed in a temporary non-use status.

e. Affiliate. Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (a) either one controls or has the power to control the other, or (b) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the disqualification, nonuse, suspension, debarment, or proposed debarment of a carrier which has the same or similar management, ownership, or principal employees as the carrier that was disqualified, placed in nonuse, suspended, debarred or proposed for debarment.

f. Carrier, as used in this regulation, means any individual or legal entity offering or providing transportation services to DOD/MTMC, directly or indirectly. All references in this regulation to "carrier" shall be given broad application and shall automatically include transportation companies, agents, freight forwarders, holding companies, company/corporate officers, individuals and affiliates.

4. General

The following paragraphs explain MTMC procedures for excluding carriers from participating in the transportation of DOD shipments or passengers under negotiated agreements, tariffs, tenders of service, Government transportation requests, rate and service proposals, commercial or Government bills of lading, and similar arrangements. To ensure that the Government receives full and free competition benefits from carriers, disqualification or nonuse will not apply for longer than necessary to protect the interests of the Government. MTMC may continue to honor Government bills of lading, Government transportation requests, contracts, or similar transportation arrangements that are in existence at the time the carrier was disqualified, or placed in nonuse, unless a review board determines otherwise. Disqualification or nonuse may include a prohibition against bidding, during the disqualification or nonuse period, on services to be performed subsequent to the disqualification or nonuse period.

5. Causes and Conditions for Disqualification or Nonuse

The causes and conditions for disqualifying or placing a carrier in nonuse are listed below:

a. Disqualification. Disqualification action, as a result of a CRB, may be taken for a record of failure to perform or unsatisfactory performance according to the terms of negotiated agreements, tariffs, tenders of services, commercial or Government bills of lading, contracts or other similar arrangements. Examples of such failures or violations include, but are not limited to, the following:

(1) Failure to meet ordered packing/pickup dates for freight/personal property shipments; failure to meet scheduled departure/arrival times for passenger movements; failure to accept freight/personal property shipments.

(2) Exceeding established time-in-transit standards.

(3) Failure to meet required delivery dates on Government or commercial bills of lading.

(4) Mishandling of freight/personal property shipments; e.g., damaged or missing transportation seals, improper loading, blocking, packing, or bracing, or failure to adequately protect a DOD shipment.

(5) Loss or damage.

(6) Improper routing.

(7) Failure to furnish proper or adequate equipment (e.g., seat space, supplies, meals, etc.) or facilities.

(8) Retention of employees who in the performance of DOD related duties: (a) Use intemperate, vulgar or abusive language; (b) exhibit evidence of drug or alcohol use; or (c) engage in other offensive conduct.

(9) Failure to pay just debts so as to subject Government passengers to delay and shipments to possible frustration, seizure, or detention.

(10) Failure to settle claims promptly.

(11) Affiliation with a carrier which has been or is being disqualified, placed in nonuse, suspended, debarred or proposed for debarment under any appropriate authority, when action is determined to be necessary to protect the interests of the Government.

b. Nonuse. Nonuse action may be taken for operational or administrative deficiencies or violations pertaining to requirements necessary to participate in DOD transportation programs as opposed to specific incidences of unsatisfactory performance. Examples of such failures or violations include, but are not limited to, the following:

(1) Use of equipment, facilities, or personnel that fail to meet safety standards required by the proper Government agency or DOD.

(2) Failure to maintain required insurance coverage.

(3) Failure to provide required administrative documents.

(4) Expiration of, or failure to timely acquire, carrier exemption, permits, or authorities from federal, state or local authorities.

(5) Inclusion in a list issued by the Comptroller General (as provided in part 5, section 56(b) of the regulation issued by the Secretary of Labor under the authority of Reorganization Plan 14 of 1950), and found by the Secretary of Labor to be an aggravated or willful violation of the prevailing wage or overtime pay provisions of the regulations or statutes which apply.

(6) A finding by the Director, Office of Federal Contract Compliance, Department of Labor, of noncompliance with the equal employment opportunity clause provisions.

(7) Suspension, debarment or proposed for debarment by any federal agency under the authority of FAR 9.4, DFAR 209.4 or inclusion in a listing issued by the Comptroller General entitled "List of Parties Excluded from Federal Procurement or Nonprocurement Programs".

(8) Lack of financial responsibility.

(9) Violations of Federal Statutes/Executive Orders such as Interstate Commerce Act, Shipping Act, Federal Aviation Act, Elkins Act, Buy American Act, and Equal Employment Opportunity Executive Order 11246, as amended or federal/state anti-trust statutes.

(10) Failure to comply with Department of Transportation, Interstate Commerce Commission, Federal Aviation Administration, State and local governments (if applicable), Department of Defense, or any other regulatory agency regulations.

(11) An indictment, conviction, or civil judgment for commission of a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract or subcontract.

(12) An indictment or conviction under the Organized Crime Control Act of 1970, or an indictment, conviction, or civil judgment for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which affects the responsibility of the carrier.

(13) Any other cause or condition of a serious or compelling nature (e.g., suspension, debarment or proposed for debarment from contracting with the executive branch of the Government under the provisions of FAR 9.4) affecting the present responsibility of a carrier of Government property or passengers.

6. Disqualification and Nonuse Procedures

a. Disqualification. On receipt of a recommendation by a transportation officer, port commander, MTMC representative, service headquarters representative or a Federal agency, the Assistant Deputy Chief of Staff for Operations (ADCSOPS) for Quality, HQMTMC, area command representative, or designee involved will review the facts and/or recommendation to determine if a CRB should be convened to consider if any action is necessary to protect the Government. If it is determined that a board should be convened they will, with the concurrence of the Staff Judge Advocate, promptly notify the carrier of such determination. A carrier will not be disqualified without a board hearing.

Prior to convening a CRB, the carrier must be provided the following:

(1) Notice of CRB. MTMC will forward to the carrier a notice of a CRB hearing, along with a copy of this regulation, by certified mail, express air carrier, or similar means with receipt verification. The notice will state:

(a) That disqualification is being considered.

(b) The date and time the review board will convene.

(c) The reason disqualification is being considered.

(d) That the carrier will have 10 calendar days from the date the notice letter is received in which to respond by telephone or in writing to the proposed disqualification (for good cause, the notice may specify a lesser period in which to respond), request additional time, if necessary, for presenting information, notify the MTMC officials concerned of a desire to present information to the CRB in person or by telephone conference, and submit six copies of all the information they want the board to consider.

(e) That failure to respond to a board notice letter will result in automatic disqualification.

(f) If applicable, the notice may also state that the carrier must provide information identifying all affiliates.

(g) The conditions of any previously imposed or pending nonuse (paragraph 6.b. below).

(2) Any cause or condition supporting disqualification which comes to the attention of the board after notice and scheduling of a review board may be joined with the pending review board if (a) the carrier is provided written notification of the additional allegations and (b) the carrier is provided a minimum of 10 days to respond to the additional allegations prior to the commencement of the review board.

b. Nonuse. On receipt of information as to existing conditions described in paragraph 5.b., MTMC may, by written notice citing the reasons therefore and referring to this regulation, place the carrier in question in a nonuse status until (1) corrective action by the carrier has been taken, (2) evidence of such action has been submitted to the authority responsible for placing the carrier in nonuse, and (3) notice has been sent to the carrier that the nonuse status has been vacated. A CRB is not required, but may be convened if requested by the carrier or deemed necessary by MTMC, for any nonuse cause or condition discussed in paragraph 5.b. Any nonuse status shall be effective immediately.

c. Temporary non-use. Consideration will be given to placing a carrier in temporary non-use once a decision has been made to hold a CRB pursuant to paragraph 6.a. above, but shall be reserved for those instances where the circumstances indicate that immediate action is necessary to protect the Government's interest. If a board is convened by a carrier's 30th day of temporary non-use, but is continued to a further date, temporary non-use shall be extended through the completion of the board and may exceed 30 days.

7. Review Boards

a. The following CRB is established with HQMTMC to consider, investigate, and determine whether disqualification action is warranted against a carrier:

(1) Voting Members:

(a) Assistant Deputy Chief of Staff for Operations (ADCSOPS) for Quality, Primary, Deputy ADCSOPS for Quality, Alternate. Chairperson.

(b) Deputy ADCSOPS for Transportation Services, Primary, ADCSOPS for Transportation Services, Alternate.

(c) Deputy ADCSOPS for Operations, Primary, ADCSOPS for Operations, Alternate.

(d) Chief of Evaluation Division, ADCSOPS for Quality or Alternate.

(e) Deputy ADCSOPS for Safety and Security, Primary, ADCSOPS for Safety and Security, Alternate, on boards involving safety and/or security issues. Chief of Negotiations Division, ADCSOPS for Transportation Services, Primary, Deputy Chief of Negotiations, ADCSOPS for Transportation Services, Alternate, on all other boards.

(2) Advisory members (non-voting):

(a) Representative of the Staff Judge Advocate.

(b) Representative of the ADCSOPS for Safety and Security.

(c) Principal Assistant Responsible for Contracting (PARC) or alternate, as applicable.

(d) Mode/vendor expert/action officer.

(e) Additional advisory members may be added to the board as deemed necessary by the Chairperson.

b. The following CRB is established within MTMC area commands to consider, investigate, and determine whether disqualification action is warranted against a carrier:

(Area command CRBs will be similar in composition and structure to the HQMTMC CRB outlined above).

c. Board Meetings and Records. The board will meet at the call of, and at a place designated by, the Board Chairperson. The board secretary/recorder will be provided by the Evaluation Division, ADCSOPS for Quality, and will be responsible for recording the minutes of board hearings and keeping necessary records. Records may be summarized (non-verbatim) and should be maintained in an 8½ × 11 loose leaf binder in chronological order with an alphabetical case index at the front. These case summaries will be maintained for 3 years by each activity holding boards and will be available to the public under the provisions of existing Freedom of Information Act (FOIA) regulations. Cases which are determined by the Staff Judge Advocate to establish a significant precedent will be permanently retained.

(1) Verbatim Records. A verbatim record of the review board hearing may be taken at MTMC's discretion and expense. However, it is not MTMC's normal business practice to record board proceedings or to transcribe those board proceedings which are recorded. If a verbatim record is taken it will be maintained in the appropriate case file. A copy of the verbatim record shall be provided to the carrier upon request. A verbatim record of the review board hearing may be taken at the carrier's expense by carrier provided personnel. Carrier shall notify MTMC of its intent to take a verbatim record of the hearing not less than 72 hours prior to the convening of the review board. Requests for the verbatim record by someone who is not a party to the hearing shall be processed in accordance with the FOIA.

(2) Access. CRBs consistently consider detailed information regarding a carrier's business operations and business relationship with MTMC. Board hearings shall therefore be closed to persons not present as either (1) a representative of MTMC or the military service/agency affected; (2) a representative of the carrier; (3) a witness in the hearing; or (4) a person present with the consent of the carrier.

d. Board Determination.

(1) If the carrier presents data within the prescribed 10-calendar-day period (or approved extension), the determination of whether to disqualify the carrier will be made at the conclusion of the board proceedings, unless the evidence presented requires further investigation, in which case the carrier will be informed of when to expect a determination.

(2) If, within the 10-calendar-day period specified in the initial notice of a CRB, or any extension, the carrier neither disputes the information nor requests additional time to present new information, a determination on whether to disqualify the carrier may be made on the next working day after the last day of the 10-calendar-day period, including any extension thereof, and will be made based upon the information held by the board at that

time. Such failure to respond to a board notice may result in automatic disqualification of the carrier.

(3) The existence of a cause of condition for nonuse or disqualification does not necessarily require the placement of the carrier in a nonuse or disqualified status. The board may consider the following factors prior to making a determination:

(a) Existing investigative reports (e.g., police, safety, Defense Investigative Service, or Criminal Investigation Command). Discrepancies involving classified shipments will be investigated through the Office of Safety, Security and Intelligence in coordination with the cognizant Director, Defense Contract Management Command.

(b) Carrier's written and oral presentation to the board, to include whether the carrier has fully investigated the circumstances surrounding the case for nonuse or a carrier review board and if so, made the results of its investigation available to the board.

(c) Carrier's past performance.

(d) Special services provided by the carrier which may be unavailable elsewhere.

(e) Corrective action taken by the carrier to preclude similar incidents from recurring, to include whether the carrier has taken appropriate disciplinary action against the individuals responsible for the activity which resulted in placing the carrier in nonuse or convening a CRB.

(f) Carrier's responsiveness to the command investigation.

(g) Whether the carrier has instituted, or agreed to institute, new or revised review and control procedures, if warranted.

(h) Whether the carrier has had adequate time to eliminate the circumstances within the carrier's organization that led to the cause for nonuse action or convening a CRB.

(i) The financial condition of the carrier and the economic impact of nonuse or disqualification on its future.

(j) Whether the carrier's management recognizes and understands the seriousness of the misconduct giving rise to the cause for nonuse action or convening a CRB and has implemented programs to prevent recurrence.

(k) Whether the carrier has implemented, or agreed to implement, remedial measures including any identified by the board.

(l) Whether the carrier has paid or agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has agreed to make full restitution.

(m) Whether the carrier brought the activity cited for nonuse or a CRB to the attention of the appropriate Government agency in a timely manner.

(n) Whether the carrier had effective standards of conduct and internal control systems in place at the time of the activity which constituted cause for nonuse or convening a CRB or has adopted such procedures since Government investigation of the activity which constituted cause for nonuse or a CRB.

(o) Whether the carrier, as a corrective measure, has agreed to make restitution to or reimburse the Government for performance failures.

(4) The board, when imposing disqualification, will determine the time frame involved on case-by-case basis (area commands not to exceed 180 calendar days). Any board determination shall be by majority vote.

(5) At the time the board determines a period of disqualification, they may suspend for a stated period of time, the execution of all or any part of the period of disqualification. The period of suspension should not be unreasonably long and should not extend beyond the period of disqualification. The purpose of suspending the execution of the period of disqualification is to give the carrier a probationary period within which to demonstrate that cited differences have been corrected and the carrier is fit, willing, and able to transport DOD passengers and shipments. Additional instances of failure to perform or unsatisfactory service provide the basis for vacating the suspension of the disqualification without further hearing. Upon vacation, the entire period of a suspended disqualification will become effective. Such incidents also give rise to a new basis for an additional board proceeding which could lead to additional disqualification action. A period of suspended disqualification, unless sooner vacated, will automatically expire at 2400 hours on the last day of the stated period of time for the period of suspension.

(6) Upon making a determination, the area command board will immediately notify the area command chief of staff who will, in turn, notify the Deputy Chief of Staff for Operations (DCSOPS), HQMTMC. The HQMTMC board chairperson will, upon a board determination, notify the DCSOPS who will, in turn, notify the Commander. The area command will, when requested, forward all documentation used in reviewing a controversial case to the ADCSOPS for Quality at HQMTMC.

(7) In accordance with DOD Regulation 4500.34–R, AR 55–355, or under the following conditions, the area commands will forward all information and/or recommendations pertaining to a carrier's service to the Commander, MTMC, prior to initiating any action:

(a) When it appears that a disqualification period exceeding 180 days may be warranted.

(b) When it appears that nationwide disqualification of the carrier may be in order.

(c) Other instances as deemed necessary by the cognizant area commander.

(8) The Chairperson of the board will ensure that the carrier shall verify previously requested information and provide any additionally requested information sufficient for the board to determine the name, address and relationship of all carrier affiliates and individuals with whom the carrier has developed a business relationship for the purpose of providing transportation services for DOD shipments. This information shall include the previous 24 months and be current up to the date of the scheduled CRB. The board will consider the need to protect DOD interests when determining whether to initiate action against known affiliates or individuals.

(9) A board hearing may be cancelled by the board chairperson if receipt of information negating the necessity to convene a board is received during the 10 calendar-day period specified in the notice letter.

8. Carrier Notification of Disqualification Determination

MTMC will notify the carrier by certified mail, express air carrier, or similar means with receipt verification, of the CRB decision. The notice will specify the reasons for, as well as the period of, disqualification.

9. Period of Disqualification

A period of disqualification will begin on the date specified by the board and will end automatically at 2400 hours on the last day of the period, unless the carrier is sooner reinstated or the disqualification was suspended and then vacated in which case it will end at 2400 hours on the last day of a period beginning on the day the suspension is vacated and continuing for the original number of days of the period of disqualification. Generally, a disqualification period should not exceed 2 years.

10. Appeal of Determination

a. A carrier placed in a disqualification status will be afforded

an opportunity to appeal an area command board disqualification to the appropriate area commander or a HQMTMC board disqualification to the DCSOPS, Military Traffic Management Command, Nassif Building, room 602, 5611 Columbia Pike, Falls Church, Virginia 22041–5050. A carrier may appeal only to the authority designated as the appellate authority for the case and shall submit its appeal in writing. The disqualification status will become effective when specified by the board and will not be stayed pending appeal unless for good cause as determined by the board. An appeal, if any, must be submitted within 15 working days after receipt of the CRB decision. A carrier may, within the 15 day period, request additional time to appeal. If the carrier appeals a disqualification which has been stayed and it is denied, the effective date of disqualification will be the day of the appeal denial.

b. The appeal will fully document the reasons for requesting relief which may include, but are not limited to, the submission of new material, the reversal of a conviction, or a bona fide change of management. The disqualification period may be terminated, suspended or reduced, upon presentation of proper evidence that the causes and conditions resulting in the initial disqualification have been eliminated or corrected. Upon receipt of a written appeal, the appropriate area commander or the DCSOPS will determine whether the appeal should be granted or denied. Such determination will be considered administratively final. The carrier will be notified of this decision by certified mail, express air carrier, or similar means with receipt verification.

11. Notice to DOD and Other Government Agencies

The board chairperson will notify DOD shippers and other Government agencies of any determination to disqualify or place a carrier in nonuse status.

12. Referral to Other Agencies

When one or more of the causes for debarment or suspension action specified in FAR Subpart 9.4 are present, the Office of the Staff Judge Advocate, HQMTMC, will coordinate with the Procurement Fraud Division, Office of The Judge Advocate General, for consideration of Government-wide debarment or suspension action. In such cases, nonuse action may be taken by the HQMTMC board chairperson for a period not to exceed 30 days, pending initiation of debarment proceedings or imposition of a suspension. Once debarment proceedings have been initiated or a suspension imposed, the board chairperson will place the carrier in nonuse.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

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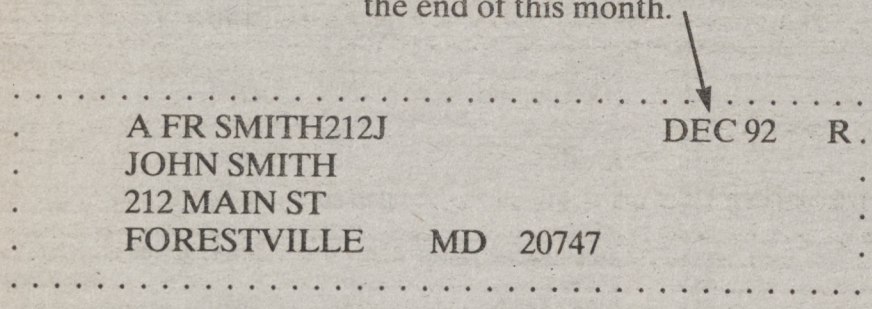

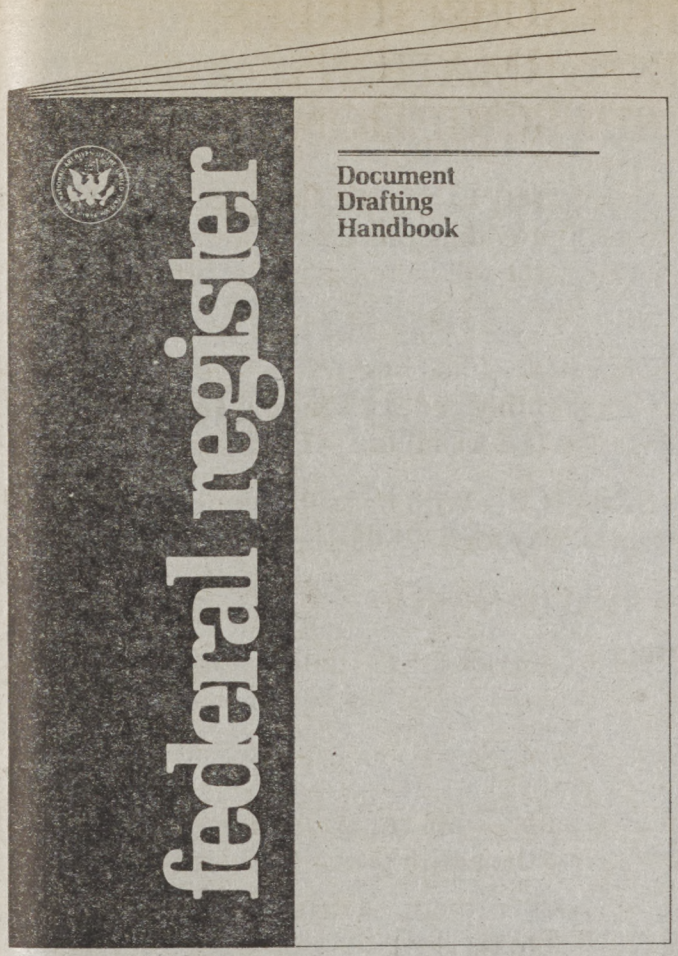

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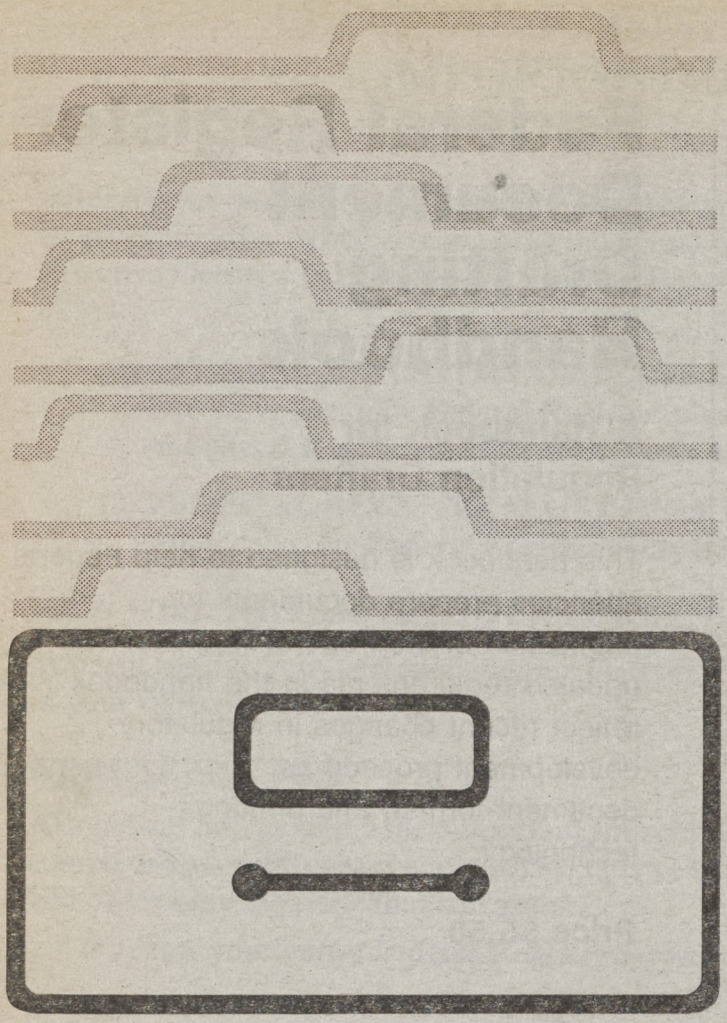

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