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WHAT: Free public briefings (approximately 3 hours) to present:

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

(two briefings)

WHEN: October 19 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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Presidential Documents

Title 3—

The President

Presidential Determination No. 93–42 of September 30, 1993

Certification To Permit U.S. Contributions to the International Fund for Ireland

Memorandum for the Secretary of State

Pursuant to Section 5(c) of the Anglo-Irish Agreement Support Act of 1986 (P.L. 99–415), I hereby determine and certify that: (1) the Board of the International Fund for Ireland as established pursuant to the Anglo-Irish Agreement of November 15, 1985, is, as a whole, broadly representative of the interests of the communities in Ireland and Northern Ireland; and (2) disbursements from the International Fund (a) will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation; and (b) will address the needs of both communities in Northern Ireland.

You are authorized and directed to transmit this determination and certification to the Congress, together with the Memorandum of Explanation, and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, September 30, 1993.

Memorandum of Explanation for Certification of the Fiscal Years 1992 and 1993 U.S. Contribution to the International Fund for Ireland

I. Introduction

This report has been prepared to comply with legislative requirements associated with the Anglo-Irish Agreement Support Act of 1986, Public Law 99–415 ("the Act").

Section 5(c) of the Act requires that each fiscal year, prior to contributions to the International Fund for Ireland (IFI), the President certify to the Congress that he is satisfied the following conditions have been met:

A. The Board of Directors of the International Fund for Ireland, as a whole, is broadly representative of the interests of the communities of Ireland and Northern Ireland;

B. Disbursements from the IFI:

1. will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and

2. will address the needs of both communities in Northern Ireland.

II. Background

A. Establishment and Operation of the Fund

The International Fund for Ireland ("the Fund") was formally established as an independent entity on December 12, 1986, in keeping with the provisions of the Anglo-Irish Agreement of November 15, 1985. The overall objectives of the Fund are to promote economic and social advancement and to encourage contact, dialogue, and reconciliation between nationalists and unionists throughout Ireland and Northern Ireland. The Anglo-Irish Agreement states that the Fund shall accomplish these objectives by stimulating private investment and encouraging voluntary efforts with special emphasis on projects promoting communal reconciliation. The Agreement also stipulated the establishment of two investment companies under the Fund.

The Fund is an independent entity which is administered by a Board of Directors appointed jointly by the British and Irish governments. The Board is guided by a Joint Advisory Committee consisting of senior civil servants drawn equally from Northern Ireland and Ireland. The Advisory Committee's principal role is to advise the Board on the economic and social policies and priorities of the two governments and to maximize the impact of assistance by avoiding duplication of activity. The Board is supported by a Secretariat composed of administrators from the two jurisdictions. The Secretariat is headed by two Joint Director Generals, one from each side. The Fund's operating expenses are paid by the British and Irish governments.

The Fund's activities are developed primarily through program teams in the following areas: Business Enterprise, Tourism, Urban Development, Agriculture and Rural Development, Science and Technology, and the Wider Horizons Program. These program teams are composed of an equal number of representatives from Northern Ireland and the Republic of Ireland. The teams are administered by joint chairmen who keep the Board of Directors apprised of their respective program teams' activities.

In an effort to focus on the more disadvantaged areas, the Fund directs 70–80 percent of the resources available in the program sectors to disadvantaged areas in Northern Ireland. The Fund also created four additional program schemes: *Community Economic Regeneration*, which focuses on community driven regeneration of economic activity in urban areas; *Community Relations*, designed to promote reconciliation; *Disadvantaged Areas Special Projects*; and, the *Community Regeneration and Improvement Special Program (CRISP)* designated for disadvantaged areas in Northern Ireland and focuses the Fund's resources on smaller towns and villages by linking a series of projects from the various program areas together.

B. Fund Contributions

The Fund receives contributions directly from bilateral and multilateral donors. U.S. obligations to date total $170 million. Under the Foreign Operations, Export Financing, and Related Programs Appropriations Act, Congress appropriated an additional $19.704 million in FY 1992 and $19.704 million in FY 1993. Since 1989, the European Community has disbursed 15 million European Currency Units (approximately US$20 million) per year to the Fund and will continue to contribute this amount until 1994. New Zealand contributed about $0.16 million in FY 1992 and Canada has provided approximately $0.39 million.

Each donor is entitled to appoint a representative to attend all Board meetings as a non-voting observer. Observers receive all Board papers and provide guidance to the Fund on behalf of their respective donor countries.

C. Program Implementation

Since its establishment in 1986, the Fund has approved a total of 2,263 projects and budgeted over $343 million to its various program areas. Some $284 million have been committed to approved projects within the various programs. The Fund has disbursed approximately $182 million to ongoing

and completed projects, including $26 million to the two investment companies.

Individual project applications continue to represent a majority of the projects for funding. However, the program teams are assisting various communities in identifying and preparing proposals through regular contact and consultation with a number of area Economic Development Consultants. The Consultants serve as a point of contact for local communities, provide technical assistance and advice, and help to speed program implementation.

The Fund has put into place a computerized system of recording key data for the projects. Information, such as employment generation, leveraging, and geographical distribution of funds, is collected and logged into the new system. The information system has assisted the IFI in developing its capacity to analyze and report on the economic and social indicators of the Fund's achievements.

New disbursement procedures have also been established for the U.S. contribution to the Fund. In October 1992, A.I.D. established a Letter of Credit mechanism to meet the legislative requirement to disburse funds at the minimum rate necessary to make timely payments for projects and activities. The Letter of Credit has allowed the U.S. Government to exercise greater control over money distributed to the Fund by transferring resources only when needed, and thereby minimizing interest costs to the U.S. Treasury.

D. Job Creation and Additional Investment

Two elements identified as priorities of the U.S. Goverment in its contribution to the Fund are job creation and the leveraging of additional investment into the economy. Both elements have been adopted by the Fund in the implementation of its program.

The Fund agrees that job creation is an essential factor in determining the allocation of Fund resources and clearly places an emphasis on the job creation potential of each project considered for funding. The Fund estimates that its activities directly resulted in the creation of about 18,000 new jobs and indirectly resulted in the creation of an additional 7,300 jobs. Construction activities have also resulted in 8,300 person-years of temporary employment.

The Fund has also been successful in leveraging new investment. Of the $284 million of Fund resources committed to approved projects, another $297 million and $186 million of private and government resources, respectively, have been invested. Thus every dollar that the Fund has committed has resulted in an additional $1.70 committed from other sources.

III. Presidential Certification Elements

Each fiscal year, prior to the United States making a contribution to the Fund, the President must certify that he is satisfied that the Fund has complied with the legislative requirements in the Act. This Certification covers both the FY 1992 and FY 1993 contributions to the Fund. The following discusses the required elements.

A. Board Representation

The Board of Directors consists of seven members; three nominated by the British government, three nominated by the Irish government, and the Chairman. Board members are approved by both sides through consultations between the two governments. The Board, by design and agreement, is representative of the communities in both Northern Ireland and Ireland. The Board meets once every two months, primarily to review policy and procedural issues and to approve or reject proposals forwarded by the program teams for consideration. In addition, each Board member is responsible for coordinating with specific program teams and is consulted on a regular basis.

The Board members are as follows:

Mr. Willie McCarter, Chairman

Mr. John E. Craig

Mr. Paddy Duffy

Mr. Pat Kenny

Mrs. J. McCrum

Ms. C. Murphy

Mr. B.A. Slowey

The Chairman is a prominent businessman and Director of Fruit of the Loom, one of the largest employers in the Northwest with major factories located in Buncrana (Republic of Ireland) and Londonderry (Northern Ireland).

As in the past, the present Board is noted for its professionalism and integrity in setting policy and approving projects. The Board has taken a proactive role in promoting the Fund throughout Northern Ireland and Ireland as well as internationally.

B. Disbursements From the International Fund

The Fund's structure and policy framework ensure that resources are distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and that these resources address the needs of both communities in Northern Ireland and the six border counties of the Republic of Ireland.

The board has developed its policies for disbursement of resources taking into account the terms of the Agreement under which it was established, the wishes of the donor countries, and the need to supplement the economic and social policies of the two governments. The Board structure and policy framework is manifested in the internal checks and balances in the Fund's appraisal, approval, and management systems. Also, the wide geographical distribution of approved projects enhances the Fund's efforts to meet the needs of both communities. The Fund's programs have created jobs, leveraged private investments, and fostered reconciliation. In addition, the Fund has made concerted efforts to target the most disadvantaged areas through CRISP and other special programs as well as through the work of development consultants.

1. *Distribution of disbursements in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation.*

a. *Structure of the Fund.* Ireland and Northern Ireland are equally represented by members of the Fund's Board of Directors, Advisory Committee, Secretariat, and Program Teams. These individuals are highly respected for their professional competence, integrity, and commitment to the Fund's objectives. The Advisory Committee, as mentioned above, is composed of senior officials of both the British and Irish governments and provides guidance and support for the Board. The Secretariat staff maintains the day-to-day operations of the Fund and have been carefully selected for their administrative skills and judgement. The Program Teams are staffed with technical and administrative professionals who are committed to the Fund's operating principles of non-discrimination. Review of the IFI portfolio of projects and visits to selected sites by Agency for International Development (A.I.D.) personnel has confirmed that the Fund has assembled a competent and professional staff who have cultivated and exercised sound project approval and management procedures.

b. *Policy Framework.* All Fund publications and solicitations for proposals clearly spell out the Fund's commitment to equality of opportunity and nondiscrimination. All successful applicants are required by the Board to agree to the following prior to receiving an award:

> "Acceptance of a grant or loan under this scheme will be deemed to signify the applicant's acceptance of the principle of equality of opportunity and non-discrimination in employment, without regard to religious affiliation and that the applicant will be expected to use the money in accordance with this principle."

Letters of offer clearly state that any violation of this agreement will require immediate repayment of resources. To date, the Fund has not had to request repayment.

Equality of opportunity requirements are also enforced in Northern Ireland under the *Fair Employment (Northern Ireland) Act of 1989*. This Act makes employment discrimination on the grounds of religious belief or public opinion illegal. The Act is designed to eradicate job discrimination and ensure the active practice of fair employment opportunity throughout Northern Ireland.

c. *Project Appraisal and Approval.* The Fund has instituted a clear and systematic appraisal and approval system. Each Program Team has signed agreements with the Fund Secretariat which spell out the criteria upon which all applications are made. As mentioned above, the Program Teams consist of officials from various government agencies, both North and South, which, in close cooperation with the Secretariat, help to bring the programs to fruition. The Team members, chosen for their expertise in their particular sector, review each project based on its merit using standard economic and financial analysis tools, as well as criteria relevant to their technical field.

Projects must also be consistent with the economic and social policies and priorities of the British and Irish governments. Each government reserves the right to veto support for activities proposed which violate their stated policies. No resources are to be used, for example, to improve the standing of or to further the goals of any paramilitary organization, either directly or indirectly. The Fund, the British government, and the Irish government are, however, committed to supporting activities which contribute to viable, self-sustaining growth, prosperity, and stability. In addition, it is hoped that the projects will have a positive impact on increasing respect for human rights and fundamental freedoms for citizens of both traditions from Northern Ireland and the Republic.

Thus, within the Fund's policy guidelines and the established criteria for the evaluation and approval process, projects are accepted for funding, rejected, or forwarded to an appropriate government agency for possible support from existing government programs. Applications are processed in a timely and efficient manner, consistent with a proper and prudent review of projects. In addition, of course, a considerable responsibility rests with the individual promoters of projects who must take the lead in completing their share of the financial package and implementing the project to a stage where payment can be made.

Each decision to approve, disapprove, or forward a project to a government agency requires the recommendation of the relevant program team, the endorsement of the two Board members supervising the team, and the approval of the Fund Secretariat. Any projects which are controversial, raise policy issues, or exceed the program team's delegation of authority, are forwarded to the Board for consideration.

Equality of opportunity and nondiscrimination is the guiding principle under which the Fund operates. Projects are reviewed on merit alone, without regard to political or religious affiliations of the applicants. The cross-community composition of the Fund Board, the Secretariat, and the program teams ensures this principle.

2. *Addressing the needs of both communities in Northern Ireland.*

In order to comply with British law, the principles under which the Fund was established, and the U.S. Government priorities under which our contribution was made, religious affiliation is not a factor in the approval

process. It is generally known, however, which religious majority is predominant within a specific geographical area.

During the program review visit by an A.I.D. official in May of 1992, management officials, community leaders, grantees, and program implementors were asked to comment on the extent to which the needs of both communities were being met. All respondents believed that every effort was being made to strengthen the cross-community nature of the programs. Many spoke of how, through Fund activities, they were able to experience for the first time a working or recreational experience with people of the opposite tradition. Such liaisons have produced cross-community boards of directors (under such organizations as the enterprise centers), cross-community enterprise matchmaking, cross-border joint ventures (such as the Derry-Galway-Boston Trade Fair), and genuine friendships. The civil servants of both governments in laboring together on the Fund have also developed excellent working, as well as personal, relationships with their counterparts. Such interaction contributes to reconciliation through dialogue and cooperation.

The Fund has made a concerted effort to direct assistance to the more economically disadvantaged areas. Special programs, such as CRISP, have been developed toward this end. The work of the development consultants is important in assisting the disadvantaged communities to develop ideas and proposals to help themselves through the Fund. The consultants participate in establishing local groups, ensure cross-community participation whenever possible, and assist groups in creating viable projects. In many cases, however, the IFI merely serves as a catalyst for community initiatives that have been developing independently of the Fund. The consultants are also instrumental in contributing to a greater overall understanding and positive perception of the Fund among the people of both communities.

IV. Conclusion

A review of Fund activities and a visit to Ireland and Northern Ireland by a senior A.I.D. officer confirms that the Board of Directors has maintained policies and procedures designed to ensure that both traditions benefit from Fund activities. The Board's operating principles ensure that project decisions are made on the basis of merit. In addition, it has been concluded that Fund resources are being distributed in a manner consistent with its mandate as stated above. All grantees are made aware of the principles of equality of opportunity and nondiscrimination in employment, stipulated by acceptance of any grant monies.

This report therefore concludes that:

- The Board of Directors of the International Fund for Ireland, as a whole, is broadly representative of the interests of the communities in Ireland and Northern Ireland.

- Monies from the Fund are distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation, and address the needs of both communities in Northern Ireland.

Appendix I.—Projects Approved, Program Allocations, Commitments, and Disbursements

[$ Million]

Projects	Projects approved	IFI program budget	Committed	Disbursed
Rural Development	530	14,172	9,905	6,117
Wider Horizons	236	26,055	21,110	21,491
Business Enterprise	232	56,454	48,042	37,353
Tourism	329	66,377	52,494	33,851
Urban Development	699	54,849	40,695	18,623
Community Relations	68	4,461	3,503	2,496
Disadvantaged Areas Initiative	49	49,317	41,544	10,740
Special Projects	29	11,208	10,241	8,456
Flagship Projects	2	11,285	9,758	6,713
Science and Technology	60	19,872	17,400	11,933
Sub-Total	2,234	314,050	254,692	157,773
Investment Companies	29	29,468	29,468	24,468
Total	2,263	343,518	284,160	182,241

Appendix II.—Estimated Employment Generated

Projects	Direct	Indirect	Construction (man years)	Total
Rural Development	704	270	259	1,233
Wider Horizons	.....	.....	.....	.....
Business Enterprise	5,259	1,770	1,156	8,185
Tourism	2,403	1,652	1,951	6,006
Urban Development	4,651	1,786	2,213	8,650
Community Relations	12	5	29	46
Disadvantaged Areas	2,157	706	1,389	4,252
Special Projects	1,623	383	122	2,128
Flagship Projects	561	42	1,072	1,675
Science and Technology	154	41	63	258
Sub-Total	17,524	6,655	8,254	32.433
Investment Companies	739	372	40	1,151
Total	17,963	7,327	8,294	33,584

Appendix III.—Amount Leveraged on Approved Projects Commitments, and Disbursements

[$ Million]

Projects	Private sector	Government	IFI	Total
Rural Development	11,835	4,740	9,905	26,480
Wider Horizons	7,152	11,291	21,110	39,553
Business Enterprise	32,379	52,448	48,042	132,869
Tourism	94,062	1,206	52,494	147,762
Urban Development	90,012	5,525	40,695	136,232
Community Relations	7,989	2,805	3,503	14,297
Disadvantaged Areas	3,114	30,459	41,544	75,117
Special Projects	10,155	15,809	10,241	36,205
Flagship Projects	1,830	41,084	9,758	52,672
Science and Technology	12,924	14,171	17,400	44,495
Sub-Total	271,452	179,538	254,692	705,682
Investment Companies	25,904	6,521	29,468	61,893
Total	297,356	186,059	284,160	767,575

Appendix IV.—Geographical Distribution of IFI Approved Projects

District Council (North):	
Ballymena	34
Ards	42
Belfast	93
Castlereagh	3
Lisburn	21
Down	90
North Down	26
Antrim	23
Carrickfergus	29
Larne	19
Newtonabbey	23
Coleraine	57
Balleymoney	20
Moyle	27
Cookstown	28
Banbridge	17
Craigavon	65
Armagh	91
Dungannon	107
Fermanagh	168
Londonderry	45
Limavady	29
Magherafelt	40
Newry & Mourne	166
Omagh	81
Strabane	68
Unallocated	314
Sub-Total	1,726
County (South):	.....
Cavan	77
Donegal	122
Leitrim	71
Louth	59
Managhan	87
Sligo	65
Unallocated	19
Sub-Total	500
Joint Regional Programs	37
Total	2,263

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Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 58, No. 195
Tuesday, October 12, 1993

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

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

COMMODITY FUTURES TRADING COMMISSION

5 CFR Chapter XLI

RIN 3209–AA04 and 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Commodity Futures Trading Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission), with the concurrence of the Office of Government Ethics (OGE), is issuing regulations (supplemental regulations) for members and other employees of the Commission which supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE, effective February 3, 1993. The regulations are a necessary supplement to the Executive Branch Standards because they address ethical issues unique to the Commission. The supplemental regulations, the substance of which has applied to Commission employees under its conduct standards codified in 17 CFR chapter I, relate to financial interests and transactions and to outside employment and activities.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Larry D. Gasteiger, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254–9880.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Commission, with OGE's concurrence, has determined that the following supplemental regulations, being codified in new chapter XLI of 5 CFR, are necessary to implement the Commission's ethics program successfully, in light of the Commission's unique programs and operations. In a related action, the Commission is today repealing certain portions of its code of conduct which have been superseded by the Standards and is recodifying at 17 CFR part 140 other portions of that code which it has independent authority to adopt.

II. Analysis of the Regulations

Section 5101.101 General

Section 5101.101 explains that the regulations apply to members and other employees of the Commission and supplement the Standards. It also notes that members and other employees are required to comply with 5 CFR part 2635, this part and the existing Commission regulations being recodified in 17 CFR part 140.

Section 5101.102 Prohibited Financial Interests and Transactions

Section 5101.102 incorporates reference to existing Commission regulations recodified in 17 CFR 140.735–2 which implement and interpret the restrictions on certain financial interests and transactions in sections 2(a)(7) and 9(c) and (d) of the Commodity Exchange Act. Because the financial interests restricted by those regulations are prohibited financial interests within the meaning of 5 CFR 2635.403, the Commission, at the request of OGE, has included a cross-reference to recodified 17 CFR 140.735–2 in § 5101.102 of its supplemental regulations.

Section 5101.103 Outside Employment and Activities

As permitted by 5 CFR 2635.802, the Commission is issuing § 5101.103(b) as a supplemental regulation. This regulation sets forth prohibitions on non-Governmental employment and outside activities applicable to Commission members and employees. Prohibited activities listed in § 5101.103(b) include the rendering of advice concerning any legal, accounting or economic matter, or any agricultural, mining, foreign currency market or other commodity-related matter, in which the Commission may be significantly interested. Also prohibited are legal representational activities in relation to any matter which relates to any policy, program or operation of the Commission. The Commission has determined that these prohibitions, which have applied to Commission personnel under superseded 17 CFR 140.735–5, should be continued to help ensure that reasonable persons will not question the impartiality and objectivity with which the Commission's programs are administered. The rule also provides that a special Government employee is not subject to the prohibition against furnishing commodity-related advice unless the employee has participated personally and substantially in the same matter or has served with the Commission 60 days or more during the immediately preceding year. Finally, § 5101.103(b) incorporates by reference the prohibition in section 2(a)(7) of the Commodity Exchange Act on Commission members or employees accepting employment from any person, exchange or clearinghouse subject to regulation by the Commission or participating in operations or transactions subject to regulation by the Commission.

Under 5 CFR 2635.803, agencies may, by supplemental regulation, require employees to obtain prior approval before engaging in outside employment or activities. Under superseded 17 CFR 140.735–5 the Commission has long required notification by employees who undertake outside employment. Based on its finding that this requirement has helped to ensure that employees' outside activities conform to applicable statutes and regulations, the Commission has determined to continue this requirement in § 5101.103(c) as necessary for the purposes of its ethics program. Section 5101.103(c) also makes clarifying changes to conform the regulation to the Commission's practices administering 17 CFR 140.735–5. Before

engaging in any outside employment, with or without compensation, § 5101.103(c) requires a Commission employee (other than a special Government employee) to obtain written approval from his or her division or office head and the Executive Director. In addition, an employee must obtain written approval from the Commission to appear in court or on a brief in a representative capacity.

"Employment" is broadly defined at § 5101.103(c)(5) to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal and similar organizations, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement of expenses.

Section 5101.103(c)(3) provides that approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and these supplemental regulations. And, § 5101.103(c)(4) sets forth the requirements for submission and processing of a written request for approval.

III. Matters of Regulatory Procedure

Administrative Procedure Act

The Commission has determined that these rules relate solely to agency organization, procedure, and practice. In addition, the substance of these rules already applies to Commission employees under the Commission's ethics standards contained in 17 CFR part 140, subpart C, 17 CFR 140.735–1–140.735–16 which, as noted above, is simultaneously being revoked in part and recodified in part by the Commission in a separate rulemaking document. Therefore, the provisions of the Administrative Procedure Act, as codified, 5 U.S.C. 553, generally requiring notice of proposed rulemaking and other opportunity for public participation, are not applicable. The Commission further finds that there is good cause to make these rules effective upon publication in the **Federal Register.**

Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), Public Law No. 96–354, 94 Stat. 1164 (1980), 5 U.S.C. 601 *et seq.*, requires each Federal agency to consider, in the course of proposing substantive rules, the effect of those rules on small entities. The Commission has determined that the provisions of the RFA do not apply to the promulgation of these supplemental regulations since they relate solely to agency procedure or practice.

Paperwork Reduction Act

The Paperwork Reduction Act of 1989, ("PRA") 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission has determined that this rulemaking does not impose any information collection requirements as defined by the PRA.

List of Subjects in 5 CFR Part 5101

Conflict of interests, Executive branch standards of conduct, Government employees.

Dated: September 27, 1993.

Jean Webb,

Secretary, Commodity Futures Trading Commission.

Approved: September 28, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission, in concurrence with the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter XLI, consisting of part 5101, to read as follows:

CHAPTER XLI—COMMODITY FUTURES TRADING COMMISSION

PART 5101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE COMMODITY FUTURES TRADING COMMISSION

Sec.

5101.101 General.
5101.102 Prohibited financial interests and transactions.
5101.103 Outside employment and activities.

Authority: 5 U.S.C. 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 7 U.S.C. 4a(f) and (j); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.802(a), 2635.803.

§ 5101.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to members and other employees of the Commodity Futures Trading Commission and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Members and other employees are required to comply with 5 CFR part 2635 and this part. Commission members and other employees are also subject to the Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission at 17 CFR part 140.

§ 5101.102 Prohibited financial interests and transactions.

In accordance with 5 CFR 2635.403(a), no Commission member or other employee shall engage in business or financial transactions, or hold business or financial interests, prohibited by the Commodity Exchange Act, as set forth in 17 CFR 140.735–2.

§ 5101.103 Outside employment and activities.

(a) Subject to the restrictions and requirements contained in 5 CFR part 2635 and this part, Commission members and other employees are encouraged to engage in teaching, speaking, and writing activities and, when qualified, to participate without compensation in programs to provide legal assistance and representation to indigents.

(b) *Prohibitions.* A Commission member or other employee shall not engage in non-Federal employment or any other outside activity that:

(1) Involves the rendering of advice concerning any legal, accounting or economic matter, or any agricultural, mining, foreign currency market or other commodity-related matter, in which the Commission may be significantly interested, except that this prohibition shall not apply to a special Government employee unless the special Government employee

(i) Has participated personally and substantially as an employee or special Government employee in the same matter; or

(ii) Has served with the Commission 60 days or more during the immediately preceding period of 365 consecutive days.

(2) Involves an appearance in court or on a brief in a representative capacity in relation to any matter which relates to any policy, program or operation of the Commission; or

(3) Is prohibited by section 2(a)(7) of the Commodity Exchange Act, as incorporated in 17 CFR 140.735–2 and 140.735–3. That statute provides that no Commission member or employee shall accept employment or compensation from any person, exchange or

clearinghouse subject to regulation by the Commission, or participate, directly or indirectly, in any contract market operations or transactions of a character subject to regulation by the Commission.

(c) *Prior approval for outside employment.* (1) Before engaging in any outside employment, with or without compensation, an employee of the Commission, other than a special Government employee, must obtain written approval from his or her division or office head and the Executive Director, who may seek the concurrence of the General Counsel.

(2) In addition to the approval under paragraph (c)(1) of this section, an employee, including a special Government employee, must obtain written approval from the Commission to appear in court or on a brief in a representative capacity.

(3) Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(4) The approval required by paragraph (c)(1) or (c)(2) of this section shall be requested in writing in advance of engaging in outside employment. The request shall be submitted to the employee's division or office head, through the employee's immediate supervisor, and shall set forth all pertinent facts regarding the anticipated employment, including the name of the employer, the nature of the work to be performed, its estimated duration and the amount of compensation to be received. If approved by the division or office head, the request shall be forwarded by the division or office head to the Executive Director. In granting or denying approval, the Executive Director may seek the concurrence of the General Counsel. If approved by the Executive Director, a request for permission to appear in court or on a brief in a representational capacity shall be forwarded to the Commission for final decision.

(5) For purposes of this section, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement of expenses.

[FR Doc. 93–24638 Filed 10–8–93; 8:45 am]
BILLING CODE 6351–01–M

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1744

Borrower Investments—Telephone Loan Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby adds a regulation concerning the types of investments REA telephone borrowers may make without prior approval of the Administrator of REA. The regulation is necessary to implement a new policy created by the Rural Economic Development Act of 1990. The purpose of this new policy is to provide an incentive for REA telephone borrowers to invest in rural communities and businesses. The regulation will establish REA's procedure for the treatment of investments in rural development projects when determining a borrower's allowable distribution of capital.

EFFECTIVE DATE: This regulation is effective on November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Matthew P. Link, Director, Rural Telephone Bank Management Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2832-S, 14th and Independence Avenue, SW., Washington, DC 20250–1500, telephone number (202) 720–0530.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule will have retroactive effect with respect to investments in rural development projects. This final rule will not:

(1) Preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; and

(2) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The REA programs provide and finance grants and loans to REA borrowers at interest rates and terms that are more favorable than those generally available from the private sector. REA borrowers, as a result of obtaining Federal financing, receive economic benefits which ultimately offset any direct economic costs associated with complying with REA regulations and requirements. Moreover, this action eases certain investment restrictions by allowing certain borrowers to invest in rural development projects without REA approval, which further offsets economic costs.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The OMB control number for these requirements is 0572–0098, which expires on September 30, 1995.

The public reporting and recordkeeping burden for this collection of information is estimated to average 3.16 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Department of Agriculture, Clearance Office, Office of Information Resources Management, room 404-W, Washington, DC 20250, and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under numbers 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees to governmental and nongovernmental entities from coverage under this Order.

Comments

On September 1, 1992, REA published a proposed rule in the **Federal Register** (57 FR 39628) implementing a new policy that would enable a REA telephone borrower to invest in rural development projects without prior approval of the Administrator of REA. This action was necessary to comply with section 2356 of the Rural Economic Development Act of 1990 (7 U.S.C. 926). The primary purpose of this new policy is to provide an incentive for REA telephone borrowers to invest in economic development projects that benefit rural communities and businesses. It is believed that this regulation could have a positive affect on rural communities and businesses served by the financially sound REA telephone borrowers. Eligible telephone borrowers that choose to invest in rural development projects could benefit both directly, through returns on their rural development project investments, and indirectly if the local economy grows, generating increased demand for telephone services.

REA received joint comments from the National Rural Telecom Association (NRTA) and the Western Rural Telephone Association (WRTA) regarding the proposed rule, which were taken into consideration in preparing the final rule. The comments and/or modifications will be discussed in the order in which they appear in the final rule.

Executive Order 12778

Comment: The commenter objected to the reference to the "retroactive effect" of the proposed rule under this section stating that nothing contained in the statute, express or implied, would suggest that Congress intended this rule to be applied retroactively. The commenter wanted all references to a retroactive application to be deleted from the final rule.

Response: The requirements of the final rule reflect REA's interpretation of section 205 of the RE Act since the effective date of this section and is consistent with the language of section 205. This approach facilitates the most effective administration of this policy, particularly the implementation of new procedures equitable to all borrowers. Therefore, the commenter's proposed change was not accepted.

Section 1744.200 General statement.

Comment: The commenter suggested that to more accurately reflect the intent of Congress, REA should amend the first sentence by inserting the following language which is consistent with the language in House Report 101–415: "REA telephone borrowers are encouraged to invest their own resources in the development of their local rural areas in keeping with the requirements of the statute limiting the amount of such investments in relation to the borrower's net worth which protects the government's legitimate loan security interests."

Response: REA believes this section sets forth the underlying purposes of the RE Act.

Section 1744.201 Definitions.

Comment: The commenter suggested that a definition of "qualified borrower" should be added to this section and defined in accordance with section 205(b) of the RE Act.

Response: Qualified borrower is defined in section 205(b) as "... a person whose net worth is at least 20 percent of the total assets of such person." REA does not interpret section 205(b) of the RE Act as requiring REA to use the specific term "qualified borrower", however, REA has incorporated the concept of "qualified borrower" in § 1744.201 under the heading "Minimum total assets ratio": means the borrower's net worth is at least twenty percent of its total assets including the proposed qualified investment. This definition facilitates efficient policy administration by REA while providing clear and concise instructions for the borrowers.

Comment: The commenter suggested that specific reference should be made to the Governor of the Rural Telephone Bank (RTB) and the application of this rule to the RTB loan program.

Response: This change has been made, see paragraph (b) of §§ 1744.200 and 1744.201.

Comment: The commenter suggested that the definition of maximum investment ratio should be revised to incorporate the concept of the timing of the calculation of the eligible investment amount to "immediately after such investment" as required by the statute.

Response: Borrowers are to determine the maximum investment ratio based on balances in their calendar year end financial report. This is necessary to ensure a clear and definitive statement for all parties when setting the "as of" date for figures to be used for the calculation. Uniform requirements permit reliable assessments of the borrowers' financial capabilities.

Section 1744.202 Borrowers may make qualified investments without prior approval of the Administrator.

Comment: The commenter suggested that the title and paragraph (a) should be amended to refer to "qualified borrowers", and by deleting the reference to "qualified investments". The commenter stated that "qualified" borrower is a reference to the statutory provision, "qualified" investments is an extraneous concept.

Response: See the response to the first comment on § 1744.201. Also, reference to "qualified investments" was retained.

Comment: The commenter objected to paragraph (b) in its entirety stating that it serves no legitimate purpose in implementing the statutory provision and is an unnecessary regulatory burden. The commenter wanted this paragraph deleted from the final rule.

Response: The definition of "qualified investment" informs the reader of what REA considers to constitute an investment and what is meant by "rural development."

Comment: In paragraph (b)(3), the commenter objected to REA's requirement that a borrower use its "own funds" when making rural development investments, and further objected to the definition of "own funds"; specifically, the reference to funds necessary for future loan payments.

Response: The definition of "own funds" informs the reader of what REA

does not consider to constitute own funds. The reference to "funds necessary for future loan payments" provides assurance that the borrower will not use funds needed to meet its loan payment obligations for other purposes.

Comment: In paragraph (d), the commenter objected to the requirement that investments be made "for a period longer than one year" stating that no where in the statute does such a requirement appear and the agency does not have the authority to impose it under the guise of implementing the statutory provision. The commenter wanted this requirement deleted from the final rule.

Response: REA believes the intent of section 205 of the RE Act is to promote long-term rural economic growth. REA is concerned that the ultimate beneficiaries, rural businesses and communities, could not achieve sustainable development if the investment goal was short-term profit maximization. Long-term commitments by borrowers are crucial to the advancement and viability of rural America.

Section 1744.203 Establishing amount of rural development investment.

Comment: The commenter objected to the concept of "estimates of future investment amount" in the calculation of the aggregate total of allowable investments and stated that this concept is outside the parameters of the statute and should be deleted from the final rule. Also, the concept of "committed funds" is extraneous to the statute.

Response: This requirement applies only to borrowers who have committed to provide funds to the project at a future date. In the interests of loan security and consistent policy guidelines, this requirement is necessary because it enables effective and accurate monitoring of the borrower's investments and financial obligations.

Comment: The commenter stated that it was the borrower's obligation to determine that it was in compliance with section 205 of the RE Act, not REA, and, that REA was given no monitoring or verification role.

Response: As a Federal lending institution, REA has an obligation to protect the Government's security interests by overseeing borrower compliance. The criteria put forth in section 205 of the RE Act determines the borrower's rural development capabilities but does not mean that investments may be made even at the risk of loan security.

Section 1744.204 Rural development investments that do not meet the ratio requirements.

Comment: The commenter suggested that paragraph (c) be revised to eliminate the notion that the one-third aggregate investments test or the 20 percent net worth test for qualified borrowers are ongoing requirements or tests that must be maintained by the borrower in the future.

Response: The regulation was changed to clarify this point, see § 1744.206.

Section 1744.205 Determinations and application of limitations described in § 1744.202.

Comment: The commenter suggested that paragraph (c) be revised to accurately reflect the timing of the calculation required under the statute to "immediately after such investment" stating that REA has no authority to establish timing different from that contained in the statute.

Response: See the response to the third comment on § 1744.201.

Section 1744.207 Investment not to jeopardize loan security.

Comment: The commenter objected to this section in its entirety stating that, Congress has determined that investments in rural development by qualified borrowers that do not exceed one-third of such borrower's net worth in the aggregate calculated immediately after the investment do not violate the Government's legitimate loan security interests. Therefore, no additional requirements are necessary or warranted under the rule. The commenter wanted this section deleted from the final rule.

Response: The criteria put forth in section 205 of the RE Act determines the borrower's rural development capabilities, it does not imply that risks to loan security are nonexistent if the borrower meets the criteria. This requirement is needed because as a Federal lending institution, REA has an obligation to protect the Government's security interests.

Section 1744.208 Rural development investments before November 28, 1990.

Comment: The commenter requested that this section be revised to exclude from the maximum investment ratio, that is, the one-third aggregate investment test, rural development investments made by the borrower before November 28, 1990.

Response: See the response to the comment on *Executive Order 12778.*

Some minor changes were made in the regulatory text for the purpose of simple clarification. Also, former §§ 1744.203 through 1744.208 were renumbered because two new sections were added to the final rule, and the headings to §§ 1744.203 and 1744.204 were changed.

In § 1744.201, the definitions of "Advance" and "Extension of credit" were added, as were the definitions of "Maximum investment ratio" and "Minimum total assets ratio" which were moved from the former paragraphs (b) and (e) of § 1744.202, respectively. In addition, the definitions of "Administrator", "Borrower", and "REA" were reworded slightly.

In paragraphs (b)(1) and (2) of § 1744.202, "guarantor" was changed to "guarantee" and "extension of credit, or advance" was added for clarification.

§ 1744.203 was reorganized for clarity purposes.

In § 1744.204, the terms "investment" or "invest" were substituted for "expenditures" or "expend."

In paragraph (c) of § 1744.205, the term "net plant" was deleted because it was unnecessary.

Finally, the former § 1744.209, OMB control number, was deleted in its entirety because the content of this section was addressed in the Supplementary section of this final rule.

List of Subjects in 7 CFR Part 1744

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

Chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

PART 1744—POST-LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS

1. The authority citation for part 1744 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. Subpart D is added and reserved and subpart E is added to read as follows:

Subpart D—[Reserved]

Subpart E—Borrower Investments

Sec.

1744.200 General statement.
1744.201 Definitions.
1744.202 Borrowers may make qualified investments without prior approval of the Administrator.
1744.203 Establishing amount of rural development investment.
1744.204 Rural development investments that do not meet the ratio requirements.
1744.205 Determinations and application of limitations described in § 1744.202.
1744.206 Effect of subsequent failure to maintain ratios.

Sec.
1744.207 Investment not to jeopardize loan security.
1744.208 Rural development investments before November 28, 1990.
1744.209 Records.
1744.210 Effect of this subpart on REA loan contract and mortgage.

Subpart D—[Reserved]

Subpart E—Borrower Investments

§ 1744.200 General statement.

(a) REA telephone borrowers are encouraged to utilize their own funds to participate in the economic development of rural areas, provided that such activity does not impair a borrower's ability to provide modern telecommunications services at reasonable rates or to repay its indebtedness to REA and other lenders. When considering loans, investments, or guarantees, borrowers are expected to act in accordance with prudent business practices and in conformity with the laws of the jurisdictions in which they serve.

(b) This subpart E applies to both REA and RTB borrowers. For the purposes of RTB borrowers, as used in this subpart E, if a borrower has received a loan from the RTB, REA means RTB, and Administrator means Governor unless the text indicates otherwise.

§ 1744.201 Definitions.

As used in this subpart:

Administrator means the Administrator of the Rural Electrification Administration (REA) and, as provided in § 1744.200(b), the Governor of the Rural Telephone Bank (RTB).

Advance means any funds provided of which repayment is expected.

Affiliated company means any organization that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the borrower.

Borrower means any organization which has an outstanding loan made by REA or RTB, or guaranteed by REA, or which is seeking such financing.

Extension of credit means to make loans or advances.

Guarantee means to undertake collaterally to answer for the payment of another's debt or the performance of another's duty, liability, or obligation, including, without limitation, the obligations of affiliated companies. Some examples of such guarantees would include:

(1) Guarantees of payment or collection on a note or other debt instrument;

(2) Issuing performance bonds or completion bonds; or

(3) Cosigning leases or other obligations of third parties.

Maximum investment ratio means that the aggregate of all qualified investments by the borrower including the proposed qualified investment shall not be more than one-third of the net worth of the borrower.

Minimum total assets ratio means the borrower's net worth is at least twenty percent of its total assets including the proposed qualified investment.

Net plant means the sum of the balances of the following accounts of the borrower:

Account Names	Number
(1) Telecommunications plant in service	2001
(2) Property held for future telecommunications use	2002
(3) Telecommunications plant under construction-short term	2003
(4) Telecommunications plant under construction-long term	2004
(5) Telecommunications plant adjustment	2005
(6) Nonoperating plant	2006
(7) Goodwill	2007
(8) Less accumulated depreciation	3100 through 3300s
(9) Less accumulated amortization	3400 through 3600s

Note: All references to account numbers are to the Uniform System of Accounts (47 CFR part 32).

Net worth means the sum of the balances of the following accounts of the borrower:

Account Names	Number
(1) Capital stock	4510
(2) Additional paid-in capital	4520
(3) Treasury stock	4530
(4) Other capital	4540
(5) Retained earnings	4550

Note: For nonprofit organizations, owners' equity is shown in subaccounts of 4540 and 4550. All references regarding account numbers are to the Uniform System of Accounts (47 CFR part 32).

Qualified investment is defined in § 1744.202(b).

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA means the Rural Electrification Administration, an agency of the United States Department of Agriculture and, as provided in § 1744.200(b), the RTB.

REA mortgage means the instrument creating a lien on or security interest in the borrower's assets in connection with a loan made or guaranteed under the RE Act.

RTB means the Rural Telephone Bank, an agency and instrumentality of the United States within the United States Department of Agriculture.

Rural development investment is defined in § 1744.202(d).

Total assets means the sum of the balances of the following accounts of the borrower:

Account Names	Number
(1) Current assets	1100s through 1300s
(2) Noncurrent assets	1400s through 1500s
(3) Total telecommunications plant	2001 through 2007
(4) Less accumulated depreciation	3100 through 3300s
(5) Less accumulated amortization	3400 through 3600s

Note: All references regarding account numbers are to the Uniform System of Accounts (47 CFR part 32).

Uniform System of Accounts means the Federal Communications Commission Uniform System of Accounts for Telecommunications Companies (47 CFR part 32) as supplemented by 7 CFR Part 1770, Accounting Requirements for REA Telephone Borrowers.

§ 1744.202 Borrowers may make qualified investments without prior approval of the Administrator.

(a) A borrower that equals or exceeds the minimum total assets ratio may make a qualified investment, defined in paragraph (b) of this section without prior written approval of the Administrator.

(b) A qualified investment is a rural development investment, defined in paragraph (d) of this section meeting the following criteria:

(1) Unless the borrower's commitment is a guarantee, extension of credit, or advance, the borrower receives any financial return accruing to such investment, or the borrower's proportionate share of such return;

(2) Unless the borrower's commitment is a guarantee, extension of credit, or advance, the borrower retains title to any asset acquired with such investment, or the borrower's proportionate share of such title; and

(3) The funds committed are the borrower's own funds. As used in this subpart, the term own funds shall not include proceeds of loans made, guaranteed or lien accommodated by REA; funds necessary to make timely payments of principal and interest on loans made, guaranteed or lien

accommodated by REA; and funds on deposit in the cash construction fund-trustee account, as defined in the borrower's loan contract with REA.

(c) A rural development investment will not be considered to be a qualified investment to the extent that the amount of such investments exceeds the borrower's maximum investment ratio.

(d) A rural development investment is an investment, extension of credit, advance, or guarantee by a borrower for a period longer than one year and for one or more of the following purposes:

(1) Improve the economic well-being of rural residents and alleviate the problems of low income, elderly, minority, and otherwise disadvantaged rural residents;

(2) Improve the business and employment opportunities, occupational training and employment services, health care services, educational opportunities, energy utilization and availability, housing, transportation, community services, community facilities, water supplies, sewage and solid waste management systems, credit availability, and accessibility to and delivery of private and public financial resources in the maintenance and creation of jobs in rural areas;

(3) Improve state and local government management capabilities, institutions, and programs related to rural development and expand educational and training opportunities for state and local officials, particularly in small rural communities;

(4) Strengthen the family farm system; or

(5) Maintain and protect the environment and natural resources of rural areas.

(e) As used in paragraph (d) of this section, the term rural development investment shall include investments by a borrower in its own name, in affiliated companies, and in entities not affiliated with the borrower.

§ 1744.203 Establishing amount of rural development investment.

For purposes of determining whether a rural development investment is within the limits of the borrower's maximum investment ratio or the minimum total assets ratio, the amount of the qualified investment shall be the total amount of funds committed to the rural development project as of the date of determination. The total amount of funds committed to the rural development project includes:

(a) The principal amount of loans and advances made by the borrower;

(b) Guarantees made by the borrower; and

(c) A reasonable estimate of the amount the borrower is committed to provide to the rural development project in future years.

§ 1744.204 Rural development investments that do not meet the ratio requirements.

(a) Each borrower is authorized to make investments other than qualified investments only in accordance with the provisions of the borrower's mortgage with REA. Without REA's approval, the portion of any investment of funds or commitment to invest funds for any rural development investment that will exceed the borrower's maximum investment ratio or cause the borrower to fall below the minimum total assets ratio, must comply with the provisions of the REA mortgage.

(b) REA will consider, on a case-by-case basis, requests for approval of rural development investments not constituting qualified investments. REA may condition such approval, if granted, on such requirements and restrictions as REA may determine to be in the best interests of the Government, including, without limitation, the borrower's agreement to limit dividends or distributions of capital by an amount specified by REA. Requests for such approvals must be submitted in writing to the relevant REA regional office and shall include:

(1) A description of the rural development project and the type of investment to be made, such as a loan, guarantee, stock purchase or equity investment;

(2) A reasonable estimate of the amount the borrower is committed to provide to the rural development project including investments that may be required in the future; and

(3) A pro forma balance sheet and cash flow statement for the period covering the borrower's future commitments to the rural development project.

(c) In determining whether to approve a rural development investment that may cause the borrower to exceed the maximum investment ratio or to fall below the minimum total assets ratio in the future, REA will consider annual increases to the borrower's net worth and total assets as might be reasonably anticipated from the borrower's normal operations.

§ 1744.205 Determinations and application of limitations described in § 1744.202.

(a) REA will not include qualified investments, including qualified investments in affiliated companies, in calculating the amount of dividend or capital distributions a borrower may make under its REA mortgage.

(b) A borrower's investment in its net plant shall not be considered a rural development investment for purposes of calculating the maximum investment ratio or the minimum total assets ratio.

(c) The borrower's net worth and total assets shall be determined using the balances of the respective accounts of the borrower as of December 31 of the last complete calendar year preceding the date on which the borrower's maximum investment ratio and minimum total assets ratio are calculated.

(d) All determinations required to be made under 7 U.S.C. 926 or this subpart will be made in accordance with the Uniform System of Accounts (USoA)(47 CFR part 32). References to specific USoA accounts shall include revised or replacement accounts.

§ 1744.206 Effect of subsequent failure to maintain ratios.

If an expenditure constitutes a qualified investment under the terms of this subpart, it does not cease to be a qualified investment merely because subsequently the borrower fails to maintain the maximum investment ratio or the minimum total assets ratio.

§ 1744.207 Investment not to jeopardize loan security.

A borrower shall not make a qualified investment or a rural development investment which jeopardizes:

(a) The security of loans made or guaranteed by REA; or

(b) The borrower's ability to repay such loans under the terms and conditions as agreed.

§ 1744.208 Rural development investments before November 28, 1990.

All investments made by a borrower shall be subject to the provisions of this subpart, regardless of when the investment was made or whether it has been approved by REA. Any restrictions required by REA as a condition to approving a rural development investment before November 28, 1990, shall continue to be in effect to the extent that such investment exceeds the maximum investment ratio or causes the borrower to fall below the minimum total assets ratio.

§ 1744.209 Records.

(a) The records of borrowers, including records relating to qualified investments, shall be subject to the auditing procedures prescribed in part 1773 of this chapter. REA reserves the right to review the records of the borrower relating to qualified investments to determine if the borrower is in compliance with this subpart.

(b) Borrowers shall report to REA on the end-of-year operating report, REA Form 479, the current status and principal amount of each qualified investment it has made or is committed to make pursuant to § 1744.202.

(Approved by the Office of Management and Budget under control number 0572–0098.)

§ 1744.210 Effect of this subpart on REA loan contract and mortgage.

(a) Except as expressly provided in this subpart, the borrower shall comply with all provisions of its loan contract with REA, its notes issued to REA, and the REA mortgage, including all provisions thereof relating to investments not covered by this subpart.

(b) Nothing in this subpart shall affect any rights of supplemental lenders under the REA mortgage, or other creditors of the borrower, to limit a borrower's investments, loans and guarantees to levels below those permitted in § 1744.202.

(c) As used in paragraph (b) of this section, supplemental lender means a creditor of the borrower, other than REA, whose loan to the borrower is secured by the REA mortgage.

Dated: October 1, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc 93–24761 Filed 10–8–93; 8:45 am]

BILLING CODE 3410–15–F

Farmers Home Administration

7 CFR Parts 1900, 1910, 1951, 1955, 1962, and 1965

RIN 0575–AA39

NonProgram (NP) Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is implementing new regulations for NonProgram (NP) loans. This action is necessary since NP loans are not eligible for program supervision and servicing and NP debtors are not eligible for program benefits and entitlements. They cannot, therefore, be made, managed, collected, and liquidated in the same manner as program loans. In the past, there have been a relatively small number of NP loans, which are on more stringent terms than program loans and are an extension of credit for the convenience of the Government. The intended effect is to have a regulation for the uniform handling of NP loans.

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Jean F. Leavitt, Senior Loan Specialist, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, South Agriculture Building, room 5309, Washington, DC 20250, telephone: (202) 720–1452.

SUPPLEMENTARY INFORMATION: This final rulemaking has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been classified as "nonmajor." 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 domestic or export markets.

BACKGROUND INFORMATION: On August 17, 1989 (54 FR 33906), Farmers Home Administration published a proposed rule on procedures for the making, management, servicing, and liquidation of nonprogram (NP) loan(s). FmHA now publishes this procedure for final rule. 7 CFR, part 1951, subpart J—Management and Collection of Nonprogram (NP) Loans is a new regulation which establishes procedures for the making, management, servicing, and liquidation of nonprogram (NP) loans. Nonprogram (NP) loans are an extension of credit for the convenience of the Government to facilitate loan servicing actions or assist with the sale of acquired property. Program credit is not provided because the property either does not meet current program requirements and/or the applicant does not meet current loan program eligibility requirements. An NP loan is made on more stringent terms than a program loan. Previously, guidance on handling NP loans was dispersed through various regulations including Subparts A and C of part 1965 and subpart C of part 1955. The new regulation combines those portions of these regulations on NP loans into one regulation and provides for guidance that was not previously and/or explicitly provided in existing regulations. This will make it easier for FmHA personnel and the general public to ascertain FmHA's regulations on NP loans.

The issues in subpart J of part 1951 which were not explicitly included in the proposed rulemaking but are part of the subject matter addressed in the proposed rulemaking are as follows:

1. Provides that an appraisal fee will be collected from applicants who wish to obtain FmHA credit to purchase a Single Family residence at the time the applicant is determined eligible for FmHA financing. This requirement has recently been implemented for program applicants. It would not be equitable to impose a financial burden on program applicants and have the Agency pay the fee for nonprogram applicants; therefore, the collection of an application fee will be required from both program and nonprogram applicants.

2. Provides that NP loans include loans converted to NP status when only a portion of the security property is being transferred and the FmHA debt is not paid in full.

3. Establishes that NP loans can be reamortized when initially establishing a borrower on an escrow system when real estate taxes for one or more years and/or an insurance premium for one year is vouchered and the borrower is not able to repay the advance within the number of years represented by the taxes or insurance, as applicable.

4. Provides that NP borrowers will escrow funds for the payments of taxes if requested by FmHA. Existing borrowers requested to escrow will be notified by letter at least 90 days prior to initiating escrowing for taxes. A borrower who is also indebted for a Farmer Program (FP) program loan will not be required to escrow.

5. Provides that FmHA will consider a borrower's offer to convey by deed in lieu of foreclosure only after the debt has been accelerated and when it is in the government's best interest.

The major issues in subpart J of part 1951 which are clarified, established, or vary from that contained in existing FmHA regulations and were included in the proposed rulemaking are as follows:

1. Reiterates and clarifies that NP loans are not eligible for program supervision or management, and NP debtors are not entitled to program benefits and entitlements such as interest credit, moratorium, reamortization, rescheduling, consolidation, deferral, limited resource assistance or appeal rights.

2. Establishes a nonrefundable application fee, which will change periodically, to process an application for NP credit. The application fee is exclusive of any required credit report fee. Initially, the fee will be set at $100.

3. Establishes downpayment requirements which are based on the purchase price for a credit sale and the current market value or debt, whichever

is lower, for an assumption. While the downpayment requirements vary depending on the type of property, the determination as to the amount of the downpayment will be based on objective standards and are available at any FmHA office.

4. Establishes a collection policy consistent with conventional lenders on the servicing and collection of overdue payments. Program servicing regulations and authorities are not authorized.

5. Clarifies that acceleration letters to NP borrowers will not contain appeal rights, but will provide the borrower with the option to have the decision reviewed by the next level supervisor to confirm the loan is in default.

6. Provides detailed guidance on settlement of NP debts.

7. Provides that NP debtors will not be released from liability unless the NP debt is satisfied in full.

Related changes are made in other regulations to conform to the new regulation.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance (CFDA) under Nos:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans
10.427 Rural Rental Assistance Payments

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 3015, subpart V, the following programs are excluded from the scope of Executive Order 12372 which requires Intergovernmental consultation with State and local officials: 10.404—Emergency Loans, 10.406—Farm Operating Loans, 10.407—Farm Ownership Loans, 10.410—Low Income Housing Loans, 10.416—Soil and Water Loans, and 10.417—Very Low Income Housing Repair Loans and Grants. The following programs are subject to intergovernmental consultation with State and local officials: 10.405—Farm Labor Housing Loans and Grants, 10.411—Rural Housing Site Loans, 10.414—Resource Conservation and Development Loans, 10.415—Rural Rental Housing Loans, 10.418—Water and Waste Disposal Systems for Rural Communities, 10.419—Watershed Protection and Flood Prevention Loans, 10.421—Indian Tribes and Tribal Corporation Loans, 10.422—Business and Industrial Loans, 10.423—Community Facility Loans, and 10.427—Rural Rental Assistance Payments.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–90, an Environmental Impact Statement is not required.

Discussion of Comments—August 17, 1989, Proposed Rule

The proposed rule published in the **Federal Register** (54 FR 33906) on August 17, 1989, provided for a 60-day comment period. Three comments were received during the comment period. One comment was received late, but was also considered in the scope of this review. All comments received were from FmHA field office employees. The summary of the comments received are presented here as follows:

1. One commentor stated that the reference to nonprogram borrowers not having appeal rights should be revised to state that a borrower does have appeal rights if the decision involved the denial of NP loan assistance under the leaseback/buyback and Homestead Protection provisions of Subpart S of Part 1951 of this chapter. We agree and have incorporated this change into the FmHA Instruction.

2. One commentor is concerned the statement "where a borrower has both program and NP loans outstanding, the servicing will be according to the regulation applicable to the program loan(s)" is unclear and therefore, can be misinterpreted. We agree and have revised this statement in the FmHA Instruction to state that a borrower who has a program and NP loan will have their loan accounts serviced and liquidated in accordance with the regulation applicable to the particular loan. Nonprogram loans are not eligible for any program servicing except those permitted in subpart J of part 1951 of this chapter.

3. One commentor suggested the downpayment remain at 10% rather than having it reduced to 5%. We agree and have revised the instruction to state that the downpayment requirements on NP farm real estate, regardless of whether the property is sold from FmHA inventory or by a debtor through transfer and assumption, will be 10%.

4. One commentor is concerned that NP borrowers are required to pledge all their farmland as security for the NP loan. The commentor believes this requirement would severely limit the number of NP buyers for surplus farm inventory properties. We agree and have revised the FmHA Instructions to require an NP loan to be secured only by the property which is purchased. The commentor is also concerned that the regulation does not provide guidance on handling surplus CONACT property which is not farm real estate (e.g., grain elevators, lake lots, gas stations, warehouse buildings, etc). We agree and have revised the instruction to include these properties.

List of Subjects

7 CFR Part 1900

Appeals, Credit, Loan programs—housing and community development.

7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Marital status discrimination, Sex discrimination.

7 CFR Part 1951

Accounting, Accounting servicing, Credit, Debt restructuring, Loan programs—Agriculture, Low and moderate income housing loans—Servicing, Foreclosure, Government acquired property, Mortgages, Rural areas, Sale of government acquired property, Surplus government property, Loan programs—Housing and community development, Rent subsidies, Subsidies.

7 CFR Part 1955

Foreclosure, Government acquired property, Sale of government acquired property, Surplus government property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Administrative practice and procedure, Foreclosure, Loan programs—Agriculture, Loan programs—Housing and Community development, Low and Moderate income housing—Rental, Mortgages, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1900—GENERAL

1. The authority citation for part 1900 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Adverse Decisions And Administrative Appeals

2. Section 1900.51 is amended by adding a sentence to the end of paragraph (b) to read as follows:

§ 1900.51 General.

* * * * *

(b) * * * The provisions of this subpart do not apply to decisions involving nonprogram (NP) applicants, borrowers, or property except denial of NP loan assistance involving the leaseback/buyback and homestead protection provisions of subpart S of part 1951 of this chapter.

* * * * *

§ 1900.55 [Amended]

3. Section 1900.55 is amended by removing paragraph (a)(13) and redesignating paragraphs (a)(14), (a)(15), (a)(16), (a)(17), and (a)(18), as (a)(13), (a)(14), (a)(15), (a)(16), and (a)(17), respectively.

4. Exhibit C of subpart B of part 1900 is amended by revising the heading to read "Letter For Notifying Applicants, Lenders, Holders, And Borrowers Of Adverse Decisions When Part Or All Of The Decision Is Not Appealable [Not Used In Connection With Decisions Related To Nonprogram Applicants, Borrowers, Or Property]" and by removing in the second paragraph the words "(month) _____,".

PART 1910—GENERAL

5. The authority citation for part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Receiving And Processing Applications

6. Section 1910.1 is amended in the introductory text by adding a sentence at the end of the paragraph to read as follows:

§ 1910.1 General.

* * * Receiving and processing applications for Nonprogram (NP) loans will be handled in accordance with subpart J of part 1951 of this chapter.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

7. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Account Servicing Policies

§ 1951.8 [Amended]

8. Section 1951.8 is amended by revising in paragraph (a) the words "1962.4 (j)" to read "§ 1962.4" and the words "1965.17 (d)" to read "§ 1965.17 (c)".

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

9. Section 1951.301 is amended by revising the seventh sentence to read as follows:

§ 1951.301 Purpose.

* * * These are NP loans which will be serviced according to subpart J of part 1951 of this chapter. * * *

10. Section 1951.314 is amended by revising paragraph (a)(6) and by adding paragraph (a)(10) to read as follows:

§ 1951.314 Reamortizations.

* * * * *

(a) * * *

(6) To initially establish a borrower on an escrow system when real estate taxes for one or more years and/or an insurance premium for one year is vouchered and the borrower is not able to repay the advance within the number of years represented by the taxes or insurance, as applicable.

* * * * *

(10) When only a portion of the security property is being transferred and the total FmHA debt is not being assumed. The remaining balance will be reamortized for a period not to exceed 10 years or the final due date of the note being rescheduled, whichever is sooner.

* * * * *

11. Subpart J of part 1951, consisting of § § 1951.451 through 1951.500, is added to read as follows:

Subpart J—Management and Collection of Nonprogram (NP) Loans

Sec.

1951.451 General.
1951.452 Policy.
1951.453 [Reserved]
1951.454 Review of adverse decisions.
1951.455 NP loan making for Single Family Housing (SFH) and farm property (real and chattel).
1951.456 [Reserved]
1951.457 Payments.
1951.458 Servicing real estate taxes.
1951.459 Preservation of security.
1951.460 Release of security property or sale or lease of related property rights.
1951.461 Release of valueless FmHA lien without monetary consideration.
1951.462 Deceased borrower.
1951.463 Transfer of security and assumption of indebtedness.
1951.464—1951.467 [Reserved]
1951.468 Liquidation.
1951.469 Actions after liquidation of property.
1951.470—1951.478 [Reserved]
1951.479 Pilot projects.
1951.480 [Reserved]
1951.481 FmHA Instructions.
1951.482—1951.500 [Reserved]

Subpart J—Management and Collection of Nonprogram (NP) Loans

§ 1951.451 General.

This subpart sets forth policies and procedures of the Farmers Home Administration (FmHA) for making, managing, collecting, liquidating and settling loans on Nonprogram (NP) terms, except those on properties which secure (d) Community and Business Program (C&BP) or Multi-Family Housing (MFH) loans. All references in this subpart to farm real estate, farm property and farm chattels also include nonfarm property that was security for Farmer Program (FP) loan(s).

(a) An NP loan is a loan on terms more stringent than terms for a program loan and it is an extension of credit for the convenience of the Government because the applicant does not qualify for program assistance or the property to be financed is not suited for program purposes. Such loans are made or continued only when it is in the best interest of the Government. NP loans include:

(1) Sale of inventory property on NP terms;

(2) Assumption of a program loan on NP terms;

(3) Loans converted to NP status as a result of receipt of unauthorized assistance;

(4) Loans converted to NP status when only a portion of the security property is being transferred and the FmHA debt is not paid in full;

(5) Sale of the real property that was security for an FP loan to the previous owner under the Leaseback/Buyback program on NP terms;

(6) Sale of the real property of an FP borrower under the Homestead Protection program; or

(7) FP accounts rescheduled under an accelerated repayment agreement.

(b) C&BP/NP and MFH/NP transactions involving transfer of the security property will be submitted to the National Office for review, authorization and processing guidance. The submission must include a justification for the proposed action, a servicing and management plan, the State Director's recommendations, and the case files. The sale of C&BP and MFH inventory property to NP purchasers will be handled in accordance with subpart C of part 1955 of this chapter.

(c) Borrowers who have program and NP loans will have their loan accounts serviced and liquidated in accordance with the regulation applicable to the particular loan(s). Therefore, NP loans are not eligible for any program servicing except those permitted in this subpart. However, even though the NP loan will not be eligible for program servicing benefits or entitlements, the borrower is not precluded from receiving assistance on the program loan (e.g., having an NP farm loan should not preclude a borrower from being considered for debt restructuring assistance in the form of a deferral, rescheduling, consolidation, etc., on a FP program loan). When the decision has been made to liquidate the program loan of a borrower who is also indebted for an NP loan and the NP security is also additional security for the program loan the NP loan will be accelerated at the same time as the program loan using the program acceleration notice. Likewise, if an NP loan is to be liquidated and the borrower is also indebted for a program loan which serves as additional security for the NP loan the program loan will be accelerated at the same time as the NP loan using the program acceleration notice. Any appeal of an adverse decision involving both an NP and program loan would affect only the program loan.

§ 1951.452 Policy.

NP credit is extended for the convenience of the Government in servicing an existing loan or to facilitate sale of inventory property. Where a borrower has both program and NP loans outstanding, servicing will be according to the regulation applicable to the particular loan(s). NP borrowers are not eligible for program entitlements or servicing actions such as subsidy, moratorium, reamortization, rescheduling, consolidation, deferral, limited resource assistance, buyout, writedown and conservation easements. Neither are NP borrowers subject to occupancy/operation requirements, graduation or other similar requirements imposed on program borrowers. NP borrowers are required to adequately maintain the security, pay real estate taxes and/or assessments when due or make scheduled escrow installments for taxes and insurance when required by FmHA, and keep buildings insured according to the promissory note and mortgage or security agreement, but may lease all or a portion of the security without FmHA's consent, except as provided in § 1951.460 (a0 and (b) of this subpart.

§ 1951.453 [Reserved]

§ 1951.454 Review of adverse decisions.

NP applicants and borrowers are not entitled to appeal rights under subpart B of part 1900 of this chapter; except that a borrower does have appeal rights if the decision involves the denial of NP loan assistance under the Leaseback/Buyback and Homestead Protection provisions of subpart S of this Part 1951. However, decisions involving NP applicants, borrowers or property are reviewable by the next level supervisor.

§ 1951.455 NP loan making for Single Family Housing (SFH) and farm property (real and chattel).

(a) *Application for NP credit.* Applications for credit on NP terms are made at the County Office serving the area where the property is located or through an approved packager or real estate broker if so instructed by County Office personnel. To apply for NP credit, except Leaseback/Buyback and Homestead Protection, standard forms used to process program applications may be utilized or comparable documentation which contains information to establish financial stability, creditworthiness, and repayment ability for the requested credit. However, the loan approval official will have the discretion to determine what information is required to support approval of the loan. For property purchased under the Leaseback/Buyback and Homestead Protection programs the information required to support approval of the loan will be in accordance with subpart S of part 1951 of this chapter. The creditworthiness standards in § 1944.9 of subpart A of part 1944 of this chapter will be used to evaluate an NP applicant's eligibility for FmHA assistance to purchase a single family residence. The application is not complete until all information requested by FmHA is received.

(b) *Fees.* A nonrefundable application fee must be submitted with the application. In addition, credit reports will be ordered to determine the eligibility of NP applicants requesting FmHA credit. A nonrefundable credit report fee will be charged the applicant. The amounts of these fees change periodically; current fees will be quoted by FmHA county office personnel upon request. A borrower whose loan is reclassified as NP because unauthorized assistance was received; or only a portion of the security property is being transferred and the FmHA debt is not paid in full; or FP accounts rescheduled under an accelerated repayment agreement will not be required to submit an application or pay the application fee.

(c) *Eligibility restrictions.* If farm property is being purchased or the debt assumed, and an individual or member, stockholder, partner, or joint operator of a proposed entity transferee or purchaser has been convicted after December 23, 1985, under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is Exhibit C of subpart A of part 1941 of this chapter (available in any FmHA office), for the definition of "controlled substance") prior to the approval of the credit sale or assumption in any crop year, the individual or entity shall be ineligible for FmHA credit for the crop year in which the individual was convicted four succeeding crop years following the conviction. Purchasers will attest on the application form used that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

(d) [Reserved]

(e) *Downpayment.* A downpayment must be collected at closing and remitted in accordance with subpart B of this part 1951 (available in any FmHA office). The minimum downpayment will be based on the purchase price for a credit sale and the current market value (less any prior liens for chattel security) or the debt, whichever is lower, for an assumption. Downpayment requirements vary from time to time and vary by type of property. Current downpayment requirements will be provided by FmHA county office personnel upon request.

(f) *Interest rate.* The SFH/NP interest rate in effect at the time of loan approval will be charged on all NP assumptions and credit sales involving a single family residence. The FP/NP interest rate for real property or chattel property, as applicable, in effect at the time of loan approval, will be charged on NP assumptions and credit sales involving all other types of sales, except as otherwise stated. For the Leaseback/

Buyback program, the FP/NP farmer program interest rate for farm real estate in effect at the time of loan approval will be charged. The Homestead Protection program interest rate in effect at the time of loan approval will be charged on Homestead Protection properties.

(g) *Terms.* The purchase price for credit sales or the FmHA debt being assumed, less the downpayment amount, will be amortized as follows, except the term will never be longer than the period for which the property will serve as adequate security:

(1) *Single family residence.* (i) When a purchaser does not own an adequate home and intends to occupy the house, the term may be for a period not to exceed 30 years.

(ii) For purchasers who do not meet the criteria in paragraph (g)(1)(i) of this section, the amortization period will not be for more than 10 years unless FmHA determines that more favorable terms are necessary to facilitate the sale, in which case the assumption may be amortized using up to a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(iii) When a presently indebted NP owner/occupant wishes to purchase another property which he/she intends to occupy, the term may be for a period not to exceed 30 years on the condition that the existing debt is reamortized for a period not to exceed 10 years less the number of years the loan has been outstanding. If the existing loan has been outstanding for more than 10 years, the loan must be paid off.

(2) *Farm property (real estate security) and CONACT residential property classified as surplus.* The note amount will be amortized over a period not to exceed 15 years. When an NP loan was initially scheduled for repayment in 15 years or less together with a 25-year amortization, FmHA may authorize an extension not to exceed a total of 25 years from the date the NP assumption or credit sale was closed provided it is in the Government's best interest and FmHA retains the same lien priority.

(3) *Farm property (chattels security).* The note amount will be amortized over a period not to exceed 5 years.

(4) *Farm property (Leaseback/ Buyback).* The note amount will be amortized over a period not to exceed 25 years.

(5) *Homestead protection.* The note amount will be amortized over a period not to exceed 35 years.

(h) *Modification of security instruments.* Any convenants in the promissory note and/or security instruments (mortgage or deed of trust) relating to graduation to other credit, inability to secure other financing, restrictions on leasing, FP operation requirements, and consent to junior lien encumbrance will be deleted.

(i) *Security.* The security requirements for an NP loan on a single family residence will be in accordance with subpart A of part 1944 of this chapter. The security requirements for NP loans on farm real estate will be in accordance with Subpart A of part 1943 of this chapter and NP loans on chattel property will be secured in accordance with Subpart A of part 1962 of this chapter. Except that, an NP loan will be secured only by the property purchased.

(j) *Closing.* Title clearance, preparation of deeds, loan closing and property insurance requirements are the same as for an FmHA program loan on the same type property, except the purchaser must pay his/her own closing costs.

§ 1951.456 [Reserved]

§ 1951.457 Payments.

(a) *Receiving payments.* Borrowers indebted for a Single Family residence or who have purchased property under the Homestead Protection program will mail their payments directly to the address shown on the coupon. Borrowers who bring or send regular payments to the County Office will be instructed to mail them directly to the address shown on their coupon. Borrowers who bring in cash payments will be charged a fee necessary to convert the cash to a money order. If the fee is not paid, it will be deducted from the payment. Borrowers indebted for a farm loan(s), including property purchased under the Leaseback/ Buyback program will mail or bring their payments to the County Office.

(b) *Payments not received when due.* NP borrowers are expected to make scheduled payments when due. FmHA personnel are not required to provide program supervision, servicing, management or credit counseling in accordance with FmHA servicing instructions if payments are not received when due. To ensure consistency, a series of contacts will be made when servicing delinquent accounts. All actions taken, agreements reached and recommendations made in the servicing of the borrower's account are to be documented. When appropriate, FmHA may work out a reasonable agreement with an NP borrower to cure a delinquency; however, such an agreement will not usually exceed 1 year. Failure to make payments as agreed will result in actions determined by FmHA to best protect the Government's interest. Collection of a delinquency from an Internal Revenue Service (IRS) offset will be used to the extent permitted by law.

§ 1951.458 Servicing real estate taxes.

In this section, "taxes" include assessments which, if not paid, will become a lien on the property. Borrowers are required to pay the taxes on FmHA security property when they become due. Security instruments for FmHA credit provide that the borrower will escrow funds for the payment of taxes if requested by FmHA. Existing borrowers requested to escrow will be notified by letter at least 90 days prior to initiating escrowing for taxes. Monthly payment borrowers will be required to escrow, except that, a borrower who is also indebted for an FP program loan will *not* be required to escrow. Failure to pay the taxes is a default of the loan convenants. Borrowers who have not paid their taxes will be notified by FmHA. FmHA will *not* voucher for taxes on NP loans except to protect the Government's security interest. FmHA will advance funds for the payment of taxes as follows:

(a) *Borrowers required to escrow for taxes.* Taxes will be paid as they become due from the borrower's escrow account. If a borrower's escrow account contains sufficient funds, all discounts will be taken advantage of when it is determined by FmHA to be in the best financial interest of the borrower and the Government. If a borrower has insufficient funds in his/her escrow account to pay the taxes when due, the escrow servicer will request the borrower to pay an amount equal to the difference between the taxes due and the escrow balance in a lump sum within 30 days after notification. If the borrower fails to remit the amount requested, the amount will be advanced and charged to the borrower's account as a recoverable cost. When initially establishing a borrower on an escrow system, NP accounts can be reamortized provided taxes for 1 or more years are vouchered and the borrower is not able to repay the advance within the number of years represented by the taxes.

(b) *Foreclosure-pending cases.*—(1) *Borrowers not required to escrow.* Where State law permits property will be sold at foreclosure sale subject to outstanding taxes. Where taxes must be paid up to the foreclosure sale date, payment should be deferred until the date for the foreclosure sale is set unless the taxing authority scheduled a tax sale sooner. This permits a single advance to be processed and allows flexibility for a

management decision if it is later determined, due to such considerations as high tax rate, length of time required to foreclose, and possible vandalism or other loss, there is no recovery to be made. If a tax sale is scheduled while foreclosure is pending, FmHA will either pay the taxes by voucher in accordance with paragraph (c) of this section or allow the property to be sold at the tax sale, as determined to be in the Government's best interest.

(2) *Borrowers required to escrow for taxes.* Taxes will continue to be paid as outlined in paragraph (a) of this section until the property is acquired by FmHA.

(c) *Processing tax advances.* When a borrower's taxes are to be paid by an escrow servicer, an advance will be drawn from FmHA to cover the escrow shortage. When a borrower's taxes are to be paid by FmHA, the advance will be charged to the borrower's account as an unamortized cost item. A tax advance will bear interest at the rate which is in effect on the initial loan or the lowest loan number within the fund code still outstanding.

§ 1951.459 Preservation of security.

(a) *Inspections of NP security property.* Inspections will be made on NP security as necessary to protect FmHA's security interest. In the event of abandonment, servicing actions will be taken according to § 1955.55 of subpart B of part 1955 of this chapter.

(b) *Subordination.* Subordination is not authorized where an NP borrower only owes FmHA an NP loan(s). Subordination of a mortgage may be permitted to refinance, extend, reamortize, increase the amount of an existing prior lien, or to permit a prior lien only when the security for the NP loan is also security for an FmHA program loan, the request for the subordination meets all the requirements for the subordination of the FmHA program loan and is in the best interest of the Government.

(c) *Bankruptcy.* NP loans on single family residences will be serviced in accordance with subpart C of part 1965 of this chapter, farm real estate in accordance with subpart A of part 1965 of this chapter, and farm chattel in accordance with subpart A of part 1962 of this chapter.

§ 1951.460 Release of security property or sale or lease of related property rights.

(a) *Partial release.* Release of a portion of the security property may be made when the borrower requests it and FmHA determines the release will not adversely affect the Government's interest. Release may be approved when payment is received by FmHA in the amount of the market value, as determined by FmHA, of the property to be released. Proceeds from such transactions (less related expenses authorized by FmHA) will be applied to the FmHA indebtedness as an extra payment or to prior liens in order of lien priority.

(b) *Easements, right-of-ways, and lease of mineral rights or other rights.* Consent may be given by FmHA for the borrower to grant an easement or lease mineral rights when it is determined by FmHA the action will not adversely affect the Government's interest. The granting of an easement or right-of-way and lease of mineral rights may be approved when payment is received by FmHA in the amount of the market value, as determined by FmHA, for rights granted or benefits are derived which are equal to or greater than the value of the property being disposed of. Proceeds from these transactions (less related expenses authorized by FmHA) will be applied to the FmHA debt as an extra payment or to prior liens in order of lien priority.

(c) [Reserved]

(d) [Reserved]

§ 1951.461 Release of valueless FmHA lien without monetary consideration.

Release of an FmHA lien without monetary consideration may be granted when it is determined by FmHA to have no present or prospective value or when enforcement would be ineffectual or uneconomical. Judgment liens or statutory redemption rights may be released only with prior consent of OGC.

§ 1951.462 Deceased borrower.

When an NP borrower dies, FmHA will determine whether or not arrangements can be effected for continuation of the loan under one of the provisions of this section. If not, the loan may be liquidated according to § 1951.468 of this subpart. The servicing actions and the circumstances under which they may be considered are outlined in paragraphs (a) through (d) of this section.

(a) *Continue with jointly liable borrower.* If a jointly liable borrower will repay the loan and fulfill other obligations of the loan, FmHA will take no action to liquidate the loan.

(b) *Assumption by spouse not liable for the FmHA debt.* The spouse of a deceased borrower who is not liable for the FmHA debt and who wishes to assume the debt may do so in accordance with § 1951.463(d)(1) of this subpart.

(c) *Continue with joint tenant, tenant by the entirety, or other person.* When a joint tenant, tenant by the entirety, or other person who inherits title to (or an interest in) the security property, on which the principal residence is located, by devise, descent, or operation of law upon the death of a borrower makes payments as scheduled in the promissory note (or assumption agreement), FmHA may not take action to liquidate the loan as long as the property is adequately maintained, real estate taxes and assessments are paid when due, and the dwelling is not known to be uninsured (if funds for taxes and insurance are being escrowed, the escrow is a part of the scheduled payments). The loan may be assumed in accordance with § 1951.463(d) of this subpart; however, assumption of the indebtedness is not required. Continuation with a joint tenant, tenant by the entirety, or other person under the provisions of this paragraph applies only to the transfer of title resulting from death of the borrower; it does not apply to any subsequent transfer of title by the inheritor(s) except by devise, descent, or operation of law upon the death of the inheritors or sale of interests among inheritors to consolidate title. Any other subsequent transfer of title will be treated as a sale and is subject to the requirements of § 1951.463 of this subpart.

(d) *Assumption by a person, other than the spouse, who is not liable for the FmHA loan.* A person other than the deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, without receiving title to the property, may do so in accordance with § 1951.463(d)(1) of this subpart provided:

(1) The residence will continue to be occupied by one or more persons who were dependent on the borrower at the time of death; and

(2) There is reasonable prospect for orderly repayment of the loan and other obligations of the loan will be met.

§ 1951.463 Transfer of security and assumption of indebtedness.

When a borrower proposes to sell security property, assumption of the indebtedness may be approved on program or NP terms, as applicable, subject to the provisions of paragraphs (c) and (d) of this section. Assumptions under paragraphs (b)(2), (b)(3), (b)(4), (b)(5) and (d) of this section only are authorized on existing terms. When security property is sold (or title is otherwise conveyed), whether by full conveyance or by land contract, contract-for-deed, or other similar instrument, and the FmHA debt is not

assumed by the purchaser (new owner) or paid in full, the conveyance will not be approved, except as provided in paragraphs (b)(2) and (b)(5) of this section or § 1951.462 of this subpart. If the conveyance is not approved the loan must be liquidated unless FmHA determines it is not in the Government's best interest. If FmHA decides to continue with the loan, the account will be serviced in the borrower's name and the borrower will remain liable for the loan under the terms of the security instrument.

(a) [Reserved]

(b) *General.* The following policies apply to all transfers and assumptions under this subpart:

(1) *Amount of assumption.* Except for transfers covered in paragraphs (b)(2), (b)(3), (b)(4), (b)(5) and (d) of this section, the transferee will assume the lesser of the indebtedness, or current market value as determined by FmHA, less any prior liens and the downpayment.

(2) *Conveyance of security property by borrower to spouse or child.* When a borrower conveys security property to his/her spouse or children, assumption of the indebtedness is not required and FmHA may not take action to liquidate the loan as long as payments are made as scheduled and other obligations of the loan are met. In the event the transferee(s) wishes to assume the indebtedness, it may be assumed on the terms outlined in paragraph (d)(1) of this section as applicable to the circumstances.

(3) *Withdrawal of jointly liable borrower.* When a stockholder/member/partner/joint operator of an entity who is personally liable on the note withdraws from the entity or dies, and all of the remaining individuals are not personally liable on the note(s), the loan must be assumed by all remaining parties.

(4) *Addition of new transferee(s).* When new stockholders/members/partners/joint operators enter an entity, assumption of the indebtedness is required, however, the indebtedness may be assumed on existing terms. A downpayment based on the unpaid balance of the loan is required when the assumption is closed.

(5) *Conveyance of security property into an inter vivos trust.* When the borrower conveys security property into an inter vivos trust, whereby the borrower does not transfer rights of occupancy in the property, FmHA may not take action to liquidate the loan as long as payments are made as scheduled and other obligations of the loan are met.

(c) *Program assumption.* A NP loan may be assumed by an eligible program applicant if the property meets the eligibility requirements for a currently authorized program (SFH, Farm Ownership (FO), etc.). In such cases, the assumption will be at the interest rate and up to the maximum term in effect for the type loan involved at the time the assumption is approved. After assumption on program terms, the loan will be reclassified as Rural Housing (RH), FO, etc., as applicable.

(d) *NP assumption.* The rates and terms for an NP assumption will be as provided in § 1951.455 of this subpart. A loan may be assumed on existing terms only in the situations outlined in paragraphs (b)(2), (b)(3), (b)(4), (b)(5), (d)(1), (d)(2), and (d)(3) of this section. An individual not liable for the loan who acquires title to or an interest in the security by means of one of the situations mentioned may assume the indebtedness on existing terms or current terms if more favorable, in which case a downpayment based on the unpaid balance would be required. The interest rate, final due date, payment date, and account status (current, delinquent, ahead of schedule) will not be changed by virtue of an assumption on existing terms, after assumption compliance with loan conditions is required. If a same terms assumption is consummated and the account is delinquent, it may be reamortized in accordance with applicable program regulations. Situations where these terms are authorized are:

(1) An individual who acquires title to or an interest in the security property by virtue of death, divorce, or deed from a spouse or parent but is not liable for the debt and who wishes to assume the loan may do so. Any subsequent transfer of title, except between inheritors to consolidate title, will be treated as a sale and is not covered by these provisions. Individuals in this category are:

(i) A deceased borrower's surviving spouse.

(ii) A divorced borrower's spouse.

(iii) A joint tenant with right of survivorship or relative of a deceased borrower.

(2) The spouse or child of a living borrower to whom title to the security property has been conveyed by spouse or parent.

(3) A person other than the deceased borrower's spouse who wishes to continue with the loan under conditions outlined in § 1951.462 (c) or (d) of this subpart may do so.

(e) *County Committee actions on Farmer Program assumptions.* On program assumptions, the County Committee must certify the transferee's eligibility for the type of loan to be assumed.

(f) *Title clearance and loan closing.* Title clearance and closing will be the same as for any program loan of the same type.

(g) *Release from liability.* Release from liability of NP borrowers is not authorized.

§§ 1951.464—1951.467 [Reserved]

§ 1951.468 Liquidation.

When it is determined an NP borrower cannot or will not successfully repay the loan, FmHA will attempt to have the borrower liquidate voluntarily.

(a) *Voluntary.* If an NP borrower in default indicates a willingness to voluntarily liquidate, other liquidation actions by FmHA may be delayed for a reasonable period, usually not to exceed 120 days for real estate, if the borrower is earnestly seeking other financing, or has the security property listed or offered for sale and it is being actively marketed at a reasonable price.

(b) *Foreclosure.* If an NP borrower in default (monetary or nonmonetary) does not cure the default and is not willing or able to voluntarily liquidate, the servicing official will refer the case to the next level supervisor with a recommendation for further action. If foreclosure is approved, the account will be accelerated. NP borrowers do not have appeal rights under subpart B of part 1900 of this chapter; however, the NP borrower may request a review of the decision to foreclose by the next level supervisor to consider evidence that the loan is not in default. If the borrower fails to satisfy the account during the period specified in the demand letter, FmHA will proceed with foreclosure without further notice or extension of time.

(c) *Conveyance to FmHA.* FmHA does not solicit or encourage conveyance of NP security property to the Government and will consider a borrower's offer to convey by deed in lieu of foreclosure only after the debt has been accelerated and when it is in the Government's best interest. Release of the borrower from liability is not authorized. Upon receipt of an offer to convey, FmHA will remind the borrower of provisions for voluntary liquidation under paragraph (a) of this section. The borrower will also be informed of the consequences of a conveyance by deed in lieu of foreclosure as follows:

(1) All costs related to the conveyance which FmHA pays will be added to the debt;

(2) A credit equal to the market value of the property, as determined by

FmHA, less prior liens, will be applied to the debt; and

(3) If the credit does not satisfy the debt, the debtor remains liable for the payment of the account balance and the account will be debt settled.

(d) *Consent to sale of real estate security when the FmHA debt and authorized selling expenses exceed market value.* If an NP borrower proposes to sell real estate security for an amount which will be insufficient to pay the FmHA debt, prior lien(s) if any, and sale expenses authorized by FmHA, an appraisal will be completed and FmHA may consent to the sale if the proposed sale price is not less than the market value. No commission will be allowed or paid under this paragraph when the sale is to the broker, broker's salesperson(s), to persons living in his/her or salesperson(s) immediate household or to legal entities in which the broker or salesperson(s) have an interest if the sale involves FmHA credit. If credit is not being extended to the persons mentioned in the preceding sentence (a cash sale), a commission will be allowed or paid. In no case will the borrower (seller) receive any cash proceeds from the sale. Any real estate taxes due from the transferor and other authorized selling expenses for which there is insufficient equity proceeds for payment at closing will be charged to the borrower's account prior to loan closing. Authorized selling expenses will not be considered or included in the amount assumed. Release from liability is not authorized.

§ 1951.469 Actions after liquidation of property.

(a) [Reserved]

(b) *Servicing unsatisfied account balances.* A current financial statement will be obtained, if possible, when application of sale proceeds does not satisfy an NP loan; or if a conveyance to FmHA has been accepted and credit of the market value less prior liens and estimated inventory handling expenses does not satisfy the debt, FmHA will pursue collection if there appears to be income or assets from which to collect. Where the borrower owns other real estate, or if the borrower is known to be in the process of purchasing other real estate (such as another dwelling), a judgment for the remaining debt including expenses paid by FmHA will be sought.

(c) [Reserved]

§§ 1951.470–1951.478 [Reserved]

§ 1951.479 Pilot projects.

From time to time FmHA conducts pilot projects to test concepts related to the management and/or sale of SFH inventory property which may deviate from the provisions of this subpart, but will not be inconsistent with provisions of the authorizing statutes, or other Acts affecting FmHA's loan programs. Prior to initiation of a pilot project, FmHA will publish in the Federal Register a Notice outlining the nature, scope, and duration of the pilot. The pilot projects may be handled by FmHA employees and/or under contract with persons, firms, or other entities in the private sector.

§ 1951.480 [Reserved]

§ 1951.481 FmHA Instructions.

Detailed FmHA Instructions for administering this subpart are available in any FmHA office (FmHA Instruction 1951–J).

§§ 1951.482–1951.500 [Reserved]

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

12. Section 1951.608 is amended by revising in the second sentence of paragraph (e)(1)(i)(B) the words "under paragraph (e)(i)(B) of this section" to read "under this paragraph".

13. Section 1951.608 (e)(1)(iii) is amended in the second sentence by revising the words "of FmHA 1951–13" to read "or FmHA 1951–13".

14. Section 1951.612 is amended by revising in the fourth sentence of paragraph (a)(1)(i) the words "§ 1951.618 (a)(1)(iii)" to read "1951.618 (a)(1)(ii)"; by revising in the second sentence of paragraph (a)(1)(ii) the words "§ 1951.618 (a)(1)(iii)" to read "§ 1951.618 (a)(1)(ii)"; by removing paragraph (a)(1)(iv), introductory text; by redesignating paragraphs (a)(1)(iv)(A), (a)(1)(iv)(B), (a)(1)(iv)(C), and (a)(1)(iv)(D) as paragraphs (a)(1)(iii)(A), (a)(1)(iii)(B), (a)(1)(iii)(C), and (a)(1)(iii)(D), respectively; and by revising the introductory text of paragraph (a)(1)(iii) and newly redesignated paragraphs (a)(1)(iii)(A) and (a)(1)(iii)(D) to read as follows:

§ 1951.612 Servicing options in lieu of liquidation or legal action to collect.

* * * * *

(a) * * *

(1) * * *

(iii) When the case is not serviced according to paragraphs (a)(1)(i) or (ii) of this section, or the recipient was not eligible for a loan, or the loan was approved for unauthorized purposes as outlined in § 1951.604 (a)(1)(iv) of this subpart, continuation with the loan on the existing terms is authorized, after which the loan will be serviced as an authorized loan, *except* that, if interest credit is granted in a case where continuation is authorized under the provisions of this paragraph, all subsidy granted will be recaptured to the extent proceeds are available when the property is sold, allowing a deduction for authorized selling expenses only. Where interest credit is granted in cases of this type, the following actions must be taken:

(A) The borrower must agree in writing to the recapture of subsidy as outlined in paragraph (a)(1)(iii) of this section executing an agreement in the format of Exhibit E of this subpart (available in any FmHA office).

* * * * *

(D) If the borrower refuses to execute the agreement prescribed in paragraph (a)(1)(iii) (A) of this section, interest credit will *not* be granted on the loan.

* * * * *

§ 1951.618 [Amended]

15. Section 1951.618 is amended by removing paragraph (a)(1)(ii); by redesignating paragraph (a)(1)(iii) as (a)(1)(ii); by removing paragraph (a)(8)(i)(B); by redesignating paragraph (a)(8)(i)(C) as (a)(8)(i)(B); and by revising in the second sentence of the introductory text of paragraph (b) the words "in paragraph (b) of this section" to read "under this paragraph."

Subpart S—Farmer Programs Account Servicing Policies

16. Section 1951.911 is amended by revising paragraphs (a)(7)(iii), (a)(7)(iv), (b)(9), (b)(10), and (c) to read as follows:

§ 1951.911 Preservation Loan Service Programs.

(a) * * *

(7) * * *

(iii) The property will be offered on eligible terms (if the purchaser is eligible in accordance with subpart A of part 1943 of this chapter) and credit sale processed in accordance with subpart C of part 1955 of this chapter or NP terms in accordance with subpart J of part 1951 of this chapter. The interest rate

(iv) If the purchaser is an eligible applicant (in accordance with subpart A of part 1943 of this chapter) and the value of the property is greater than $200,000, the property may be financed with a $200,000 credit sale on eligible terms and the remainder with the applicant's own resources and/or with participating credit as set forth in subpart A of part 1943 of this chapter. If the value of the farm property is greater than $200,000 and the eligible applicant is NOT able to arrange the necessary financing for the balance over

$200,000, FmHA may finance the purchase of the property with a credit sale on NP terms in accordance with subpart J of part 1951 of the chapter. A credit sale on eligible terms and the remaining balance of ineligible term will NOT be made to the same applicant to purchase farm property.

* * * * *

(b) * * *

(9) *Rates and terms for a credit sale.* Terms for a credit sale of homestead protection property when the lessee is exercising the option to purchase will be in accordance with subpart J of part 1951 of this chapter.

(10) *Closing.* A credit sale will be closed in accordance with subpart J of part 1951 of this chapter.

* * * * *

(c) *Servicing homestead protection loans.* Homestead protection loans will be serviced as set forth in subpart J of part 1951 of this chapter.

PART 1955—PROPERTY MANAGEMENT

17. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured By Real Estate and Acquisition of Real and Chattel Property

18. Section 1955.2 is amended by revising the last sentence to read as follows:

§ 1955.2 Policy.

* * * Nonprogram (NP) loans, except for Community and Business Programs, will be liquidated as provided in subpart J of part 1951 of this chapter, unless specifically referenced in this subpart.

Subpart C—Disposal of Inventory Property

19. Section 1955.101 is amended by adding two sentences at the end of the section to read as follows:

§ 1955.101 Purpose.

* * * Credit sales of inventory property to ineligible (nonprogram (NP)) purchasers will be handled in accordance with subpart J of part 1951 of this chapter, except Community and Business Programs (C&BP) and Multi-Family Housing (MFH) which will be handled in accordance with this subpart. In addition, credit sales of Single Family Housing (SFH) properties converted to MFH will be handled in accordance with this subpart.

20. Section 1955.102 is amended by adding a sentence at the beginning of this section to read as follows:

§ 1955.102 Policy.

The terms "nonprogram (NP)" and "ineligible" may be used interchangeably throughout this subpart, but are identical in their meaning. * * *

21. Section 1955.108 is amended by revising paragraph (a) to read as follows:

§ 1955.108 Sale of surplus property (CONACT).

* * * * *

(a) *Rates and terms.* Rates and terms for Homestead Protection and Leaseback/Buyback will be in accordance with subpart S of part 1951 of this chapter. Except for C&BP properties, all surplus property will be offered for cash or on ineligible terms in accordance with subpart J of part 1951 of this chapter. C&BP surplus property will be offered for cash or on ineligible terms of not less than 10 percent downpayment with the remaining balance amortized over a period not to exceed 25 years. The State Director will determine the loan terms for surplus property within these limitations. The interest rate for Business and Industry (B&I) property will be the established insured B&I rate for profit corporations plus ½ percent; for Community Programs property the interest rate will be the current market rate for Community Programs. A credit sale made on ineligible terms will be closed at the interest rate in effect at the time the credit sale was approved. After extensive sales efforts where no acceptable offer has been received, the State Director may request the Administrator to permit offering surplus property for sale on more favorable rates and terms; however, the terms may not be more favorable than those legally permissible for eligible borrowers. Surplus property will be offered for sale for cash or terms that will provide the best net return for the Government. The term of financing extended may not be longer than the period for which the property will serve as adequate security. All credit sales on ineligible terms will be identified as NP loans.

* * * * *

22. Section 1955.109 is amended by revising in the last sentence of paragraph (b) the words "or ineligible" to read "on ineligible" and by revising paragraphs (a), (c), (h), and (i) to read as follows:

§ 1955.109 Processing and closing (CONACT).

(a) *Determining repayment ability and creditworthiness.* If a credit sale is involved, the applicant must furnish necessary financial information to assist in determining repayment ability and creditworthiness. Form FmHA 431–2, "Farm and Home Plan," should be used for all eligible applicants unless the applicant has furnished all required information in another acceptable format. Information regarding eligibility, planned development and total operations will be provided the same as for the respective type of Farmer Program loan. Purchasers requesting credit on ineligible terms, except for C&BP, will be handled in accordance with subpart J of part 1951 of this chapter. For C&BP, information will be provided which is similar to an application including financial information required for the respective loan program to establish financial stability, creditworthiness and repayment ability.

* * * * *

(c) *Form of payment.* Payments at closing will be in the form of cash, cashier's check, certified check, postal or bank money order, or bank draft made payable to FmHA and handled in accordance with subpart B of part 1951 of this chapter.

* * * * *

(h) *Classification.* Credit sales on ineligible terms for C&BP will be classified as NP loans and serviced accordingly.

(i) *State supplements.* A State supplement specifying modifications to be made in note and mortgage instruments as pertinent to a credit sale to an ineligible purchaser for C&BP will be issued with the advice and approval of OGC.

* * * * *

23. Section 1955.114 is amended by revising the second sentence in paragraph (a)(5) to read as follows:

§ 1955.114 Sales steps for program property (housing).

* * * * *

(a) * * *

(5) * * * Cash sales will be handled in accordance with § 1955.118 of this subpart and credit sales on NP terms will be made in accordance with subpart J of part 1951 of this chapter.

* * * * *

24. Section 1955.115 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1955.115 Sales steps for non program (NP) property (housing).

* * * * *

(a) *Single Family Housing.* Sales steps will be the same as for program properties as provided in § 1955.114(a) of this subpart, except that sales must be for cash in accordance with § 1955.118 or credit on NP terms as provided in subpart J of part 1951 of this chapter. See Exhibit D of this subpart (available in any FmHA office) which outlines chronologically the sales steps for NP properties.

* * * * *

25. Section 1955.118 is amended by revising the heading and by revising paragraph (a), the introductory text of paragraph (b) and paragraphs (b)(2), (3), (4), (5), (6), (8)(iii) and (10) to read as follows:

§ 1955.118 Processing cash sales or MFH credit sales on NP terms.

(a) *Cash sales.* Cash sales will be closed by the servicing official collecting the purchase price (less any earnest money deposit or bid deposit) and delivering the deed to the purchaser Proceeds will be remitted in accordance with subparts B and K of part 1951 of this chapter.

(b) *Credit sales.* The following provisions apply to MFH credit sales on NP terms:

* * * * *

(2) *Processing.* Purchasers requesting credit on NP terms will be required to submit documentation to establish financial stability, repayment ability, and creditworthiness. Standard forms used to process program applications may be utilized or comparable documentation may be accepted from the purchaser with the servicing official having the discretion to determine what information is required to support loan approval for the type property involved. Individual credit reports will be ordered for each individual applicant and each principal within an applicant entity in accordance with subpart B of part 1910 of this chapter. Commercial credit reports will be ordered for profit corporations and partnerships, and organizations with a substantial interest in the applicant entity in accordance with subpart C of part 1910 of this chapter.

(3) *Approval.* Form FmHA 1944–51 will be used to approve a credit sale even though no obligation of funds is involved. Special instructions on the FMI pertaining to NP credit sales will be followed.

(4) *Downpayment.* A downpayment of not less than 10 percent of the purchase price is required at closing and will be remitted by the servicing official according to subpart B and K of part 1951 of this chapter.

(5) *Interest rate.* The Section 515 RRH interest rate plus ½ percent will be charged on all types of housing credit sales, except SFH. Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for interest rates. Loans made on NP terms will be closed at the interest rate which was in effect at the time the loan was approved.

(6) *Term of note.* The note amount will be amortized over a period not to exceed 10 years. If the State Director determines more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing. In no case will the term be longer than the period for which the property will serve as adequate security.

* * * * *

(8) * * *

(iii) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions for all MFH sales.

* * * * *

(10) *Classification.* MFH credit sales on NP terms will be classified as NP loans and serviced accordingly.

* * * * *

26. Section 1955.119 is amended by revising the introductory text of the section and the introductory text of paragraph (d) to read as follows:

§ 1955.119 Sale of SFH inventory property to a public body or nonprofit organization.

Notwithstanding the provisions of § 1955.111 through § 1955.118 of this subpart, this section contains provisions for the sale of SFH inventory property to a public body or nonprofit organization to use for transitional housing for the homeless. A public body or nonprofit organization is a nonprogram applicant. All other SFH credit sales on nonprogram terms will be handled in accordance with subpart J of part 1951 of this chapter.

* * * * *

(d) *Approval and closing.* Processing cash sales or MFH credit sales on nonprogram terms is according to § 1955.118 of this subpart, except as follows:

* * * * *

27. Section 1955.120 is amended by adding a sentence at the end of the section to read as follows:

§ 1955.120 Payment of points (housing).

* * * These payments will be handled in accordance with subpart B of part 1951 of this chapter.

28. Section 1955.123 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1955.123 Sale procedures (chattel).

(a) *Credit sales.* Although cash sales are preferred in the sale of chattels, credit sales may be used advantageously in the sale of chattels to eligible purchasers and to facilitate sales of high-priced chattels;. Credit sales to eligible purchasers will be in accordance with the provisions of this chapter for the appropriate program for which a loan would otherwise be made including eligibility determinations. Preference will be given to a cash offer which is at least * percent of the highest offer requiring credit. [* Refer to exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.] For FP, County Supervisors, District Directors, and State Directors are authorized to approve or disapprove credit sales on eligible terms in accordance with the respective loan approval authorities in Exhibit C of Subpart A of Part 1901 of this chapter (available in any FmHA office). The determination of eligibility of applicants or eligible applicants that have their application disapproved will be notified of the opportunity to appeal in accordance with subpart B of part 1900 of this chapter. Credit sales to ineligible purchasers of C&BP chattel property may be offered on terms of not less than 10 percent downpayment with the remaining balance amortized over a period not to exceed 5 years. The interest rate for ineligible purchasers of C&BP chattel property will be the current ineligible interest rate for FP property set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office).

District Directors and State Directors are authorized to approve or disapprove credit sales of C&BP chattel property on ineligible terms in accordance with the respective type of program approval authorities in Exhibit E of subpart A of part 1901 of this chapter (available in any FmHA office). For other than C&BP, credit sales to NP purchasers will be handled in accordance with Supbart J of Part 1951 of this chapter.

(b) *Receipt of payment.* Payment will be by cashier's check, certified check, postal or bank money order, or personal check (not in excess of $500) made payable to FmHA. Cash may be accepted if it is not possible for one of these forms of payment to be used. Third party checks are not acceptable. Payments will be handled in accordance with subpart B of part 1951 of this chapter. If full payment is not received at the time of sale, the offer will be

documented by Form FmHA 1955–45 or FmHA 1955–46 where the chattel is sold jointly with real estate by regular sale.

* * * * *

PART 1962—PERSONAL PROPERTY

29. The authority citation for part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

Subpart A—Servicing and Liquidation of Chattel Security

30. Section 1962.1 is amended by adding a sentence to the end of the section to read as follows:

§ 1962.1 Purpose.

* * * Security servicing for Nonprogram (NP) loans on farm property will be according to subpart J of part 1951 of this chapter.

31. Section 1962.34 is amended by adding in the last sentence of paragraph (d) the word "Part" before the word "1955"; by removing paragraph (e)(2); by redesignating paragraph (e)(3) as paragraph (e)(2); and by revising paragraph (b)(3) to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

* * * * *

(b) * * *

(3) FmHA debts assumed will be repaid in amortized installments not to exceed 5 years using Form FmHA 1964–13. The Farmer Program NP interest rate for chattel property set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office), in effect at the time of loan approval, will be charged. Any deferred interest not paid by the time the transfer takes place must be added to the principal balance. The transferred property, including EO property, will be subject to any existing FmHA lien. In the absence of an existing FmHA lien, new lien instruments will be executed.

* * * * *

PART 1965—REAL PROPERTY

32. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing of Real Estate Security For Farmer Program Loans and Certain Note-Only Cases

33. Section 1965.1 is revised to read as follows:

§ 1965.1 Purpose.

This subpart delegates authority and prescribes policies and procedures for servicing real estate, leasehold interests, and certain note-only cases for Farmers Home Administration (FmHA) Farmer Program (FP) loans. Security servicing for borrowers who have *both* FmHA FP and Single Family Housing (SFH) loans, (excluding Technical Assistance Grants and Site loans), will be according to this subpart. Security servicing for borrowers who are indebted for SFH loans only, will be according to subpart C of part 1965 of this chapter. Security servicing for Nonprogram (NP) loan(s) on farm real estate and chattel property will be according to subpart J of part 1951 of this chapter. For borrowers who have both a FP and NP loan, security servicing will be in accordance with the applicable FP regulations and subpart J of part 1951 of this chapter. This subpart does not apply to FmHA guaranteed loans, Rural Rental Housing (RRH) loans, Labor Housing (LH) loans, Business and Industrial (B&I) loans, Community Programs (CP) loans, Shift-in-Land-Use (Grazing Association) loans, Irrigation and Drainage (I&D) loans, or Indian Tribal Land Acquisition loans.

§ 1965.12 [Amended]

34. Section 1965.2 is amended by redesignating paragraphs (a), (b), and (c) as (b), (c) and (d) respectively and by adding a paragraph (a) to read as follows:

§ 1965.2 General policies.

(a) The terms "nonprogram (NP)" and "ineligible" may be used interchangeably throughout this subpart but are identical in their meaning.

* * * * *

35. Section 1965.12 is amended by removing the first sentence of the introductory text and by removing the last sentence of paragraph (g).

36. Section 1965.13 is amended by revising the first sentence of the introductory text to read as follows:

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

See subpart S of part 1951 of this chapter when a combination of NP, ST and other FP loans are involved. * * *

* * * * *

§ 1965.17 [Amended]

37. Section 1965.17 is amended by removing paragraph (c) and redesignating paragraph (d) as (c).

§ 1965.26 [Amended]

38. Section 1965.26 is amended by removing the heading of paragraph (e)(4)(i); by removing paragraph (e)(4)(ii); by redesignating paragraphs (e)(4)(i)(A), (B), and (C) as (e)(4)(i), (ii), and (iii), respectively; and by revising the words "(A) or (B) of this paragraph" in newly redesignated paragraph (e)(4)(iii) to read "paragraphs (e)(4)(i) or (ii) of this section".

39. Section 1965.27 is amended by revising the fifth sentence of the introductory text; by revising the last sentence of paragraph (c)(1)(ii); by revising paragraphs (c)(1)(iii)(C), (d), (f), (g)(4), and (g)(6)(i) to read as follows:

§ 1965.27 Transfer of real estate security.

* * * Transfer with assumption of real estate security on NP terms will be in accordance with subpart J of part 1951 of this chapter. * * *

* * * * *

(c) * * *

(1) * * *

(ii) * * * See subpart J of part 1951 of this chapter.

(iii) * * *

(C) On ineligible rates and terms in accordance with paragraph (d) of this section for all other transferees. The ineligible term assumption(s) will be serviced in accordance with § 1965.34 of this subpart.

* * * * *

(d) *Assumption of loans by ineligible transferees.* When a borrower sells or proposes to sell the real estate security to a person(s) or entity not eligible to assume the debt under paragraph (b)(5) or (c) of this section, the debt may be assumed on NP terms in accordance with subpart J of part 1951 of this chapter.

* * * * *

(f) *Release of transferor from liability.* The borrower may be released from personal liability when all of the real estate security is transferred under paragraph (c) or (d) of this section and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. When the transferor's remaining outstanding FmHA debt after a transfer and assumption exceeds $150,000, the Administrator or designee must approve the release of liability; otherwise, the State Director must approve or disapprove the release of liability. All cases requiring a release of liability will be submitted for review in accordance with Exhibit A of subpart B of part 1956 of this chapter (available in any FmHA office). When the total outstanding debt is not assumed and an FP borrower is to being released from liability, the borrower must be sent a letter similar to Exhibit F of subpart A of part 1955 of this chapter (available in any FmHA

office). SFH borrowers will be released from liability in accordance with § 1965.127 of subpart C of part 1965 of this chapter. In FP cases, the County Committee must take certain action if it is to recommend that the transferor(s) and any cosigner be released from liability. They must determine that the transferor(s) and any cosigner do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer; that the transferor and any cosigner have cooperated in good faith, used due diligence to maintain the security against loss, and have otherwise fulfilled the covenants incident to the loan to the best of their ability; and recommend that the transferor and any cosigner be released of personal liability upon the transferees' assumption of that portion of the indebtedness equal to the present market value of the security. This action will be documented by checking the appropriate block on Form FmHA 440–2, "County Committee Certification or Recommendation," as specified in the Forms Manual Insert.

(g) * * *

(4) *Farms and Home plans and financial statements.* When an assumption will be for less than the amount of the indebtedness and a release of liability is involved, a current financial and income statement of the transferor will be obtained on Forms FmHA 1944–3 or FmHA 431–2 or other plan of operation acceptable to FmHA.

* * * * *

(6) * * *

(i) The transfer will be contingent upon the County Committee certification on Form FmHA 440–2 for an eligible applicant. This action will be documented by checking the appropriate block on Form FmHA 440–2, as specified in the Forms Manual Insert.

* * * * *

§ 1965.31 [Amended]

40. Section 1965.31 is amended in paragraph (c) by revising the words "Real Estate Mortgage for _____" to read "Real Estate Mortgage or Deed of Trust for _____(Insured Loans to Individuals)".)

§ 1965.34 [Removed and reserved]

41. Section 1965.34 is removed and reserved.

Subpart C—Security Servicing for Single Family Rural Housing Loans

42. Section 1965.101 is amended by adding a sentence at the end of the section to read as follows:

§ 1965.101 Purpose.

* * * Security servicing for Nonprogram (NP) loans on a single family residence will be according to subpart J of part 1951 of this chapter.

43. Section 1965.104 is amended by revising paragraph (c)(2) to read as follows:

§ 1965.104 Preservation of security and protection of liens.

* * * * *

(c) * * *

(2) *Junior lien foreclosure.* When a junior lienholder foreclosure does not result in payment in full of the FmHA debt but the property is sold subject to the FmHA lien, the account may be assumed by the purchaser on program terms subject to the provisions of § 1965.126(c) or NP terms as provided in subpart J of part 1951 of this chapter; otherwise the FmHA loan will be liquidated.

* * * * *

§ 1965.105 [Amended]

44. Section 1965.105 is amended by revising in the last sentence of the introductory text the words "paragraphs (a), (b), and (c)" to read "paragraphs (a) and (b)"; by removing paragraph (c); and by redesignating paragraphs (d) and (e) as (c) and (d), respectively.

45. Section 1965.125 is amended by revising paragraph (a)(2)(iv) and by adding a paragraph (a)(2)(v) to read as follows:

§ 1965.125 Liquidation.

(a) * * *

(2) * * *

(iv) *Release of security instruments.* When consent under this paragraph is given, FmHA will release its security instrument(s).

(v) *Unsatisfied account balances.* Servicing unsatisfied account balances is covered in § 1965.127 of this subpart.

* * * * *

46. Section 1965.126 is amended by revising the introductory text; by revising the last sentence of the introductory text of paragraph (b)(1); by revising paragraph (b)(3); by revising the second sentence of the introductory text of paragraph (b)(4)(ii); and by revising paragraph (d) to read as follows:

§ 1965.126 Transfer of property with assumption of indebtedness.

When a borrower proposes to sell real estate security, assumption of the loan(s) may be approved on program or NP terms, as applicable. Approval on program terms will be subject to the provisions of paragraph (c) of this section and NP terms will be as provided in subpart J of part 1951 of this chapter. Assumptions under paragraphs (b)(12) and (c)(2) of this section *only* are authorized on existing terms without considering the assuming party's eligibility for program assistance. When security property is sold (or title is otherwise conveyed), whether by full conveyance or by land contract, contract-for-deed, or other similar instrument, and the FmHA account is not assumed by the purchaser (or new owner), the loan must be liquidated except as provided in paragraph (b)(12) of this section or § 1965.116 of this subpart.

* * * * *

(b) * * *

(1) * * * The following loans may be assumed on program terms under paragraph (c) of this section or NP terms in accordance with subpart J of part 1951 of this chapter:

* * * * *

(3) *Dwelling situated on more than a minimum-adequate site.* If the property to be transferred with assumption consists of a dwelling on more than a minimum-adequate site as defined in subpart A of part 1944 of this chapter, a determination must be made by FmHA as to whether the excess land can serve as a minimum-adequate site for another dwelling. It is not intended to exclude a property currently in the program from being transferred to a program applicant simply because it is situated on more than a minimum-adequate site. If it is determined that the excess property cannot be sold separately as a minimum-adequate site for another dwelling, the property may be retained in the SFH program provided the entire property is modest in cost compared to a similar house on a minimum-adequate site in the area. When only a portion of the security property is being transferred to the party assuming the FmHA debt and the balance of the FmHA debt is not paid in full when the assumption is closed, the remaining debt of the transferor will be reclassified as NP and reamortized for a period not to exceed 10 years or the final due date of the note being rescheduled, whichever is sooner, using the NP interest rate for a single family residence. FmHA will retain its security position on the portion of property retained by the transferor until the balance not assumed is repaid.

(4) * * *

(ii) * * * In those instances, assumption may be on NP terms only, in accordance with subpart J of part 1951 of this chapter. * * *

* * * * *

(d) *Assumption on NP terms.* When a borrower sells or proposes to sell security property and the purchaser does not meet the eligibility requirements for an RH loan, or the property is not suited for retention in the housing program, the debt may be assumed on NP terms in accordance with subpart J of part 1951 of this chapter.

* * * * *

Dated: June 29, 1993.

Bob Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93–24834 Filed 10–8–93; 8:45 am]

BILLING CODE 3410–07–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is repealing provisions of its regulations on the ethical conduct of employees. These provisions are superseded by Office of Government Ethics ("OGE") rules set forth in 5 CFR part 2635 and part 2634. In a related action, the Commission is today issuing jointly with OGE supplemental regulations which the Commission has determined are necessary and appropriate to fulfill the purposes of part 2635. These supplemental regulations will be codified in 5 CFR part 5100 of chapter XLI, and concern restrictions on financial interests and transactions and on outside employment and activities.

The Commission is not repealing those provisions of its conduct regulations in 17 CFR part 140 which the CFTC has authority to issue independent of the OGE ethics rules. These provisions will continue to apply to the conduct of Commission members and employees. The Commission is, however, revising certain aspects of these rules to conform to current agency administrative practice and to reflect statutory and regulatory changes that have occurred since Subpart C of part 140 was last amended.

This action relates solely to the Commission's organization, procedure, and practice.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Larry D. Gasteiger, Attorney, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254–9880.

SUPPLEMENTARY INFORMATION: On August 7, 1992, OGE issued new Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635. These standards of conduct, effective February 3, 1993, supersede the Commission's part 140 conduct regulations promulgated pursuant to 5 CFR part 735. The new standards also authorize agencies to issue (jointly with OGE) "supplemental agency regulations which the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes" of part 2635.

Accordingly, the Commission is repealing those provisions of part 140 that have been superseded: §§ 735–2 through 735–3, 735–5 (other than paragraph (a)(1)), 735–6, 735–8, 735–11, and 735–13 through 735–15. In connection with the repeal of most of § 735–5 (Non-governmental employment and other outside activity), the CFTC is jointly issuing with OGE a regulation that will supplement 5 CFR part 2635 Subpart H (Outside Activities). As is the case under existing § 735–5, the supplemental regulation sets forth procedures for CFTC employees to obtain prior approval of certain outside activities. The rule also includes exceptions, under specified circumstances, for special government employees that were formerly contained in § 735–13.

Additionally, the Commission is repealing § 735–7 (Statement of financial interests and outside employment; certification of compliance) to reflect OGE rules in 5 CFR part 2634, which, effective October 5, 1992, superseded the prior executive branch confidential reporting regulations at 5 CFR part 735, subpart D, § 735.106, and agencies' implementing regulations. Further, in connection with the repeal of § 735–13, which applied to special government employees, the obligation of such employees to file financial disclosure reports is also covered by OGE rules codified in 5 CFR part 2634.

As noted above, the government-wide conduct regulations issued by OGE do not supersede regulations that an agency has separate authority, independent of 5 CFR part 2635, to issue. Accordingly, the Commission is retaining 17 CFR 735–1 (Authority and purpose), 735–4 (restrictions on business and financial transactions and interests), 735–5(a)(1) (restrictions on accepting employment or compensation from persons regulated by the Commission), 735–8A (Receipt and disposition of foreign gifts and decorations), 735–9 (Disclosure of information), 735–10 (Practice by former members and employees of the Commission), 735–12 (Statutory violations applicable to conduct of Commission members and employees), and 735–16 (Interpretative and advisory service). These provisions have been renumbered and, in some cases, revised to reflect recent amendments to the Commodity Exchange Act and other pertinent statutes.

The Commission has determined that these rules relate solely to agency organization, procedure, and practice. Therefore, the provisions of the Administrative Procedure Act, as codified, 5 U.S.C. 553, generally requiring notice of proposed rulemaking and other opportunity for public participation, are not applicable. Since the OGE rules became effective on October 5, 1992 and February 3, 1993, the Commission further finds that there is good cause to make these rules effective upon publication in the **Federal Register.**

Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), Public Law No. 96–354, 94 Stat. 1164 (1980), 5 U.S.C. 601 *et seq.*, requires each federal agency to consider, in the course of proposing substantive rules, the effect of those rules on small entities. The Commission has determined that the provisions of the RFA do not apply to the promulgation of these regulations since they relate solely to agency procedure or practice.

Paperwork Reduction Act

The Paperwork Reduction Act of 1989 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Commission has determined that this rulemaking does not impose any information collection requirements as defined by the PRA.

List of Subjects in 17 CFR Part 140

Conflict of interests, Ethics, Organizations and functions.

PART 140—[AMENDED]

Subpart C—Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission

1. The authority citation for part 140, subpart C, is revised to read as follows:

Authority: 7 U.S.C. 4a (f) and (j), 12a(5), and 13.

2. Section 140.735–1 is revised to read as follows:

§ 140.735–1 Authority and purpose.

This subpart sets forth specific standards of conduct required of members, employees, and special government employees, and regulations concerning former members, employees, and special government employees of the Commodity Futures Trading Commission. These rules are separate from and in addition to the Office of Government Ethics' conduct rules, Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and the Commission's supplemental rules set forth in 5 CFR part 5100. In addition, this subpart contains references to various statutes governing employee conduct in order to aid members and employees in their understanding of statutory restrictions and requirements.[1]

§§ 140.735–2, 140.735–3 [Removed]

3. Sections 140.735–2 and 140.735–3 are removed.

4. Section 140.735–4 is redesignated Section 140.735–2 and revised to read as follows:

§ 140.735–2 Business and financial transactions and interests.

(a) *Application.* This section applies to all transactions effected by or on behalf of a Commission member or employee, including transactions for the account of other persons effected by the member or employee, directly or indirectly under a power of attorney or otherwise. Since this section applies to "indirect" participation in transactions, a member or employee is considered to have sufficient interest in the transactions of the spouse or minor child of the member or employee, or other relatives who are residents of the immediate household of the member or employee, so that such transactions must be reported and, absent compelling countervailing reasons, are subject to all the terms of this section.

(b) *Prohibitions.* No Commission member or employee shall:

(1) Participate, directly or indirectly, in any transaction—

(i) Involving a contract of sale of any commodity for future delivery;

(ii) Involving any commodity that is of the character of, or is commonly known to the trade as, an option, privilege, indemnity, bid, offer, put, call, advance guaranty or decline guaranty; or

(iii) For the delivery of any commodity that is or is to be executed pursuant to a standardized contract commonly known to the trade as a margin account, margin contract, leverage account or leverage contract or similar contracts when subject to regulation by the Commission under section 19 of the Act; except that the prohibitions in paragraphs (b)(1) (i) and (ii) of this section shall not apply to:

(A) A transaction in connection with a farming, ranching, oil and gas, mineral rights or other natural resource operation in which the Commission member or employee has a financial interest, if the Commission member or employee is not involved in the decision to engage in, and does not have prior knowledge of, the actual futures or option transaction and has previously notified the General Counsel in writing of the nature of the operation, the extent of the member's or employee's interest, the types of transactions in which the operation may engage and the identity of the person or persons who will make trading decisions for the operation; or

(B) A transaction entered into by any investment company (*e.g.*, a mutual fund) or similar pooled investment entity other than one operated by a person who is a commodity pool operator with respect to that entity, in which the direct or indirect ownership interest of the Commission member or employee is limited to and represents less than 1 per cent of the total ownership interest of the fund or entity and with which the Commission member or employee has no other relationship;[2]

(2) Participate, directly or indirectly, in any investment transaction involving an actual commodity if:

(i) The transaction involves the use of nonpublic information, or

(ii) The transaction is effectuated by an instrument regulated by the Commission, and is not in connection with a transaction permitted under paragraph (b)(1) of this section, or

(iii) The transaction is effected by an instrument functionally equivalent to an instrument regulated by the Commission;[3]

(3) Have a beneficial interest, through ownership of securities or otherwise, in any person[4] regulated by the Commission,[5] such as a contract market or clearinghouse or member thereof, a registered futures commission merchant,[6] any person associated with a futures commission merchant or with any agent of a futures commission merchant, floor broker, commodity trading advisor or commodity pool operator, or any other person required to be registered in a fashion similar to any of the above under the Commodity Exchange Act or pursuant to any rule or

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[1] These references, however, do not purport to cover all restrictions and requirements, and the paraphrased restatements of statutory provisions, such as that of 18 U.S.C. 201, *et seq.*, appearing in this subpart C, are not intended to be, and should not be construed as, verbatim quotations of the law. The statutory text should be consulted in any situation in which it might apply.

[2] Attention is directed to section 9(c) of the Commodity Exchange Act, which makes it a felony for any member or employee of the Commission, or agent thereof, to participate, directly or indirectly, in, *inter alia*, any commodity futures, option or leverage transaction, unless authorized to do so by Commission rule or regulation. Attention is also directed to 17 CFR 4.5, which excludes certain otherwise regulated persons from the definition of "commodity pool operator" with respect to the operation of specific investment entities enumerated in the regulation.

Although not required, if they choose to do so, Commission members or employees may use powers of attorney or other arrangements in order to meet the notice requirements of, and to assure that they have no control or knowledge of, futures or option transactions permitted under paragraph (b)(1)(A) of this section. A Commission member or employee considering such arrangements should consult with the Office of the General Counsel in advance for approval. Should a Commission member or employee gain knowledge of an actual futures or option transaction that has already taken place and the market position represented by that transaction still remains open, he or she should promptly report that fact and all other details to the General Counsel and seek advice as to what action, including recusal from pending matters involving that market, may be appropriate.

[3] Attention is directed to section 9(c) of the Commodity Exchange Act which provides, among other things, that it shall be a felony for any Commission member or employee to participate in any investment transaction in an actual commodity that the Commission by rule or regulation has prohibited to Commission members and employees. A transaction involving an instrument that is the "functional equivalent to an instrument regulated by the Commission" would include, for example, but is not limited to, a transaction in a stock index effectuated through the purchase or sale of an option traded on a national securities exchange where the stock index also underlies a futures contract regulated by the Commission. Attention is also directed to § 140.735–8 of this subpart for information regarding interpretative and advisory service by the General Counsel of the Commission.

[4] As defined in section 1a(16) of the Commodity Exchange Act and 17 CFR 1.3(u) thereunder, a "person" includes an individual, association, partnership, corporation, and a trust.

[5] Attention is directed to sections 2(a)(7) and 9(c) of the Commodity Exchange Act. See footnotes 1, 2, and 8 to this subpart.

[6] This provision does not, however, preclude a member or employee from carrying securities on margin, pursuant to customary margin requirements, with a broker who is also a registered futures commission merchant, or engaged in the trading of commodity options, or commodity leverage transactions.

regulation promulgated by the Commission;

(4) Have a significant beneficial interest, through ownership of securities or otherwise, in any other person required to file reports under the Commodity Exchange Act or pursuant to any rule or regulation promulgated by the Commission;[7] or

(5) Purchase or sell any securities of a company which, to his knowledge, is involved in any:

(i) Pending investigation by the Commission;

(ii) Proceeding before the Commission or to which the Commission is a party; or

(iii) Other matter under consideration by the Commission that could significantly affect the company.

5. Section 140.735–5 is redesignated 140.735–3 and revised to read as follows:

§ 140.735–3 Non-governmental employment and other outside activity.

A Commission member or employee shall not accept employment or compensation from any person, exchange or clearinghouse subject to regulation by the Commission. For purposes of this section, a person subject to regulation by the Commission includes but is not limited to a contract market or clearinghouse or member thereof, a registered futures commission merchant, any person associated with a futures commission merchant or with any agent of a futures commission merchant, floor broker, commodity trading advisor, commodity pool operator or any person required to be registered in a fashion similar to any of the above or file reports under the Act or pursuant to any rule or regulation promulgated by the Commission.[8]

§§ 140.735–6–140.735–8 [Removed]

6. Sections 140.735–6 through 140.735–8 are removed.

§ 140.735–8A [Redesignated as § 140.735–4]

7. Section 140.735–8A Receipt and disposition of foreign gifts and decorations is redesignated § 140.735–4.

§ 140.735–9 [Redesignated as § 140.735–5]

8. Section 140.735–9 is redesignated § 140.735–5 and revised to read as follows:

§ 140.735–5 Disclosure of information.

A Commission employee or former employee shall not divulge, or cause or allow to be divulged, confidential or non-public commercial, economic or official information to any unauthorized person, or release such information in advance of authorization for its release.[9] Except as directed by the Commission or its General Counsel as provided in these regulations, no Commission employee or former employee is authorized to accept service of any subpoena for documentary information contained in or relating to the files of the Commission. Any employee or former employee who is served with a subpoena requiring testimony regarding non-public information or documents shall, unless the Commission authorizes the disclosure of such information, respectfully decline to disclose the information or produce the documents called for, basing his refusal on these regulations.[10] Any employee or former employee who is served with a subpoena calling for information regarding the Commission's business shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making such information or document available in the public interest.[11] In any proceeding in which the Commission is not a party, no employee of the Commission shall testify concerning matters related to the business of the Commission unless authorized to do so by the Commission.

§ 140.735–10 [Redesignated as § 140.735–6]

9. Section 140.735–10 is redesignated § 140.735–6 and revised to read as follows:

§ 140.735–6 Practice by former members and employees of the Commission.

(a) Personal and substantial participation or nonpublic knowledge of a particular matter. No person who has been a member or employee of the Commission shall ever knowingly make, with the intent to influence, any communication to or appearance before the Commission in connection with any particular matter involving a specific party or parties[12] in which such person, or one participating with him or her in the particular matter, participated personally and substantially, or gained nonpublic knowledge of facts thereof, while with the Commission.[13]

(b) Particular matter under an individual's official responsibility. No person who has been a member or employee of the Commission shall,

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[7] For purposes of this section, the Office of the General Counsel normally views "significant" ownership as being 10 per cent or more of the outstanding securities of a firm or a $25,000 total investment in a firm, regardless of the percentage of stock owned. The Office has also noted that each investment must be considered on a case-by-case basis and that an investment level in excess of $25,000 may not be "significant" in the case of a large company.

[8] Attention is directed to section 2(a)(7) of the Commodity Exchange Act, which provides, among other things, that no Commission member or employee shall accept employment or compensation from any person, exchange or clearinghouse subject to regulation by the Commission, or participate, directly or indirectly, in any contract market operations or transactions of a character subject to regulation by the Commission.

[9] Attention is directed to section 9(d) of the Commodity Exchange Act, which provides that it shall be a felony punishable by a fine of not more than $500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution—(1) for any Commissioner of the Commission or any employee or agent thereof who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any commodity future or commodity and which information has not been promptly made public, to impart such information with intent to assist another person, directly or indirectly, to participate in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an option, privilege, indemnity, bid, offer, put, call, advance guaranty or decline guaranty, or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account or leverage contract, or under any contract or other arrangement that the Commission determines to serve the same function or is marketed in the same manner as such standardized contract, and (2) for any person to acquire such information from any Commissioner of the Commission or any employee or agent thereof and to use such information in any of the foregoing transactions.

[10] No employee shall disclose such information unless directed to do so by the Commission.

[11] The prohibitions regarding confidential or nonpublic information stated above are intended to cover the matters addressed in sections 4(c), 8, and 9(d) of the Commodity Exchange Act as well as nonpublic information under the Freedom of Information Act, 5 U.S.C. 552, the rules of the Commission thereunder, 17 CFR Part 145, the Privacy Act, 5 U.S.C. 552a, the rules of the Commission thereunder, 17 CFR Part 146, and cases where, apart from specific prohibitions in any statute or rule, the disclosure or use of such information would be unethical.

[12] The phrase "particular matter involving a specific party or parties" does not apply to general rulemaking, general policy and standards formulation or other similar matters. *See* § 2637.201(c)(1) of the regulations of the Office of Government Ethics, 5 CFR 2637.201(c)(1); *cf.*, memorandum of the Attorney General dealing with the conflict-of-interest provisions prior to amendment by the Ethics in Government Act (reproduced following 18 U.S.C. 201).

[13] Attention is directed to 18 U.S.C. 207(a)(1), as amended, which generally prohibits former Federal officers and employees permanently from knowingly making, with the intent to influence, any communication to or appearance before any Federal (or District of Columbia) department, agency or court, or court martial, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while with the government.

within two years after that employment has ceased, knowingly make, with the intent to influence, any communication to or appearance before the Commission in connection with a particular matter involving a specific party or parties which was actually pending under his official responsibility as a member or employee of the Commission at any time within one year prior to the termination of government service.[14]

(c) Restrictions on former members and senior employees. A former member or employee of the Commission who occupied a "senior" position specified in 18 U.S.C. 207(c)(2), as amended, shall not within one year after such "senior" employment has ceased, knowingly make, with the intent to influence, any communication to or appearance before the Commission on behalf of any other person in connection with any matter in which such person seeks official action by the Commission.[15]

[14] Attention is directed to 18 U.S.C. 207(a)(2), as amended. Section 207(a)(2) generally prohibits former Federal officers and employees, within two years after their Federal employment has ceased, from knowingly making, with the intent to influence, any communication to or appearance before any Federal (or District of Columbia) department, agency or court, or court martial, or any officer or employee thereof, in connection with any particular matter involving a specific party or parties in which the United States (or the District of Columbia) is a party or has a direct and substantial interest and which was actually pending under the official responsibility of the former officer or employee within one year prior to the termination of government service.

As used in paragraph (b) of this section, the term "official responsibility" has the meaning assigned to it in 18 U.S.C. 202(b), namely, the "direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."

[15] Attention is directed to 18 U.S.C. 207(c), as amended, which places restrictions on the representational activities of certain senior officers and employees after their departure from a senior position. Section 207(c) generally makes it unlawful for one year after service in a "senior" position terminates for a former "senior" Federal employee to knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he served in any capacity during the one year period prior to termination from "senior" service, if that communication or appearance is on behalf of any other person (except the United States), in connection with any matter concerning which he seeks official action by that employee.

Note that the one year period is measured from the date when the employee ceases to be a senior employee, not from the termination of Government service, unless the two occur simultaneously. This provision prohibits communications to or appearances before the Government and does not prohibit "behind-the-scenes" assistance. The restriction does not require that the former employee has ever been in any way involved in the matter that is the subject of the communication or appearance. The restriction applies with respect to any matter, whether or not involving a specific party.

(d) Exceptions. The prohibitions contained in paragraphs (a), (b), and (c) of this section do not apply to communications solely for the purpose of furnishing scientific or technological information if approved by the Commission or generally to giving testimony under oath or making a statement which is subject to penalty or perjury. Further, the prohibition contained in paragraph (c) of this section does not apply to an uncompensated statement in a particular area within the special knowledge of the former Commission member or employee.[16]

(e) Reporting requirement. Any former member or employee of the Commission who, within two years after ceasing to be such, is employed or retained as the representative of any person (except the United States) in connection with a matter in which it is contemplated that he will appear before or communicate with the Commission shall, within ten days of such retainer or employment, or of the time when appearance before or communication with the Commission is first contemplated, file with the General Counsel of the Commission a statement as to the nature thereof together with any desired explanation as to why it is deemed consistent with this section. Employment of a recurrent character may be covered by a single comprehensive statement. Each such statement should include an appropriate caption indicating that it is filed pursuant to this section. The reporting requirement of this paragraph does not apply to communications incidental to court appearances in litigation involving the Commission.

(f) Definitions. As used in this section, the phrase "appearance before the Commission" means any formal or informal appearance on behalf of any person (except the United States) before the Commission, or any member or employee thereof with an intent to influence. As used in this section, the phrase "communication with the Commission" means any oral or written communication made to the Commission, or any member or employee thereof, on behalf of any person (except the United States) with an intent to influence.

(g) Advisory ruling. Persons in doubt as to the applicability of this section may apply for an advisory ruling by addressing a letter requesting such a ruling to the General Counsel.

(h) Procedures for administrative enforcement of statutory restrictions on post-government employment conflicts of interest.[17] (1) Scope. The provisions of this paragraph prescribe procedures for administrative enforcement of the restrictions which 18 U.S.C. 207 (a), (b), and (c), as amended, place on appearances before or communications with Federal (and District of Columbia) departments, agencies and courts, and other enumerated entities, as well as the officers and employees thereof, by former Commission members and employees.

(2) Investigations. The General Counsel of the Commission, or his or her designee, shall conduct such investigations as he or she deems appropriate to determine whether any former Commission member or employee have violated 18 U.S.C. 207 (a), (b) or (c), as amended. The General Counsel shall report the results of his or her investigations to the Commission and shall recommend to the Commission such action as he or she deems appropriate.

(3) Hearings. Hearings required to be held under the provisions of this section shall be held before an Administrative Law Judge, utilizing the procedures prescribed by the Commission's rules of practice for adjudicatory proceedings (17 CFR Part 10), except to the extent that those rules are inconsistent with the provisions of this section. Any proceeding brought under the provisions of this section shall be prosecuted by the General Counsel or his or her designee.

(4) Sanctions. If the Commission finds, after notice and opportunity for a hearing, that a former Commission member or employee has violated 18 U.S.C. 207 (a), (b) or (c), as amended, the Commission may prohibit that person from making, on behalf of any other person (except the United States), any formal or informal appearance before, or with the intent to influence any oral or written communication to, the Commission on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action.

§ 140.735–11 [Removed]

10. Section 140.735–11 is removed.

§ 140.735–12 [Redesignated as § 140.735–7]

11. Section 140.735–12 is redesignated § 140.735–7 and revised to read as follows:

[16] Attention is directed to 18 U.S.C. 207(j), as amended (listing other exceptions). Self-representation is not prohibited under Section 207.

[17] This section does not apply to employees who leave service after December 31, 1990.

§ 140.735–7 Statutory violations applicable to conduct of Commission members and employees.

A violation of Section 2(a)(7), 8 or 9 (c) or (d) of the Commodity Exchange Act, as amended, shall be deemed to be a violation of this subpart as well.

§§ 140.735–13—140.735–15 [Removed]

12. Sections 140.735–13 through 140.735–15 are removed.

§ 140.735–16 [Redesignated as § 140.735–8]

13. Section 140.735–16 is redesignated § 140.735–8 and revised to read as follows:

§ 140.735–8 Interpretative and advisory service.

(a) *Counselor for the Commission.* The General Counsel, or his or her designee, will serve as Counselor for the Commission and as the Commission's representative to the Office of Government Ethics, on matters covered by this subpart. The General Counsel will also serve as the Commission's designated agency ethics official to review the financial reports filed by high-level Commission officials under Title II of the Ethics in Government Act, as well as otherwise to coordinate and manage the Commission's ethics program.

(b) *Duties of the Counselor.* The Counselor shall:

(1) Coordinate the agency's counseling services and assure that counseling and interpretations on questions of conflict of interests and other matters covered by the regulations in this subpart are available as needed to Regional Deputy Counselors, who shall be appointed by the General Counsel, in coordination with the Chairman of the Commission, for each Regional Office of the Commission;

(2) Render authoritative advice and guidance on matters covered by the regulations in this subpart which are presented to him or her by employees in the Washington, D.C. headquarters office; and

(3) Receive information on, and resolve or forward to the Commission for consideration, any conflict of interests or apparent conflict of interests which appears in the Statements of Employment and Financial Interests submitted under this subpart, which is not resolved by the Director of Personnel, and any other conflict of interests or apparent conflict of interests which otherwise appears.

(c) *Regional Deputy Counselors.* Regional Deputy Counselors shall:

(1) Give advice and guidance as requested to the employees assigned to their respective Regional Offices; and

(2) Receive information on and refer to the Director of Personnel, any conflict of interests or appearance of conflict of interests in Statements of Employment and Financial Interests submitted by employees to whom they are required to give advice and guidance.

(d) *Confidentiality of communications.* Communications between the Counselor and Regional Deputy Counselors and an employee shall be confidential, except as deemed necessary by the Commission or the Counselor to carry out the purposes of this subpart and of the laws of the United States.[18]

(e) *Furnishing of conduct regulations.* The Director of Personnel shall furnish a copy of this Conduct Regulation to each member, employee, and special government employee immediately upon his or her entrance on duty and shall thereafter, annually, and at such other times as circumstances warrant, bring to the attention of each member and employee this Conduct Regulation and all revisions thereof.

(f) *Availability of counseling services.* The Director of Personnel shall notify each member, employee, and special government employee of the availability of counseling services and of how and where these services are available at the time of entrance on duty and periodically thereafter.

Issued in Washington, DC, on September 27, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–24656 Filed 10–8–93; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–8–000]

Revisions to Regulations Implementing Section 5 of the Outer Continental Shelf Lands Act

Issued October 4, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending certain regulations and removing certain other regulations which were promulgated to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA). Section 5 of the OCSLA requires open access, nondiscriminatory transportation of natural gas on the Outer Continental Shelf (OCS).

Among other things, the Commission is removing the regulations governing the OCSLA capacity allocation program, and the regulation which provides for abandonment authority. In Order No. 636, the Commission established a capacity release program which is applicable for all transportation services provided by interstate pipelines that hold a Part 284 blanket transportation certificate, including OCS transactions. Hence, the Commission proposes to remove the Order No. 509 capacity allocation regulations.

EFFECTIVE DATE: November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Connie Caldwell, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–1022.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Order No. 559

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending certain regulations and removing certain

[18] No attorney-client privilege, however, attaches to such communications since the Counselors are counsel to the Commission, not to the employee. Thus, any evidence of criminal law violations divulged by an employee to the Counselor must be reported by the latter to the Commission, which may refer the matter to the Criminal Division of the Department of Justice and the United States Attorney in whose venue the violations lie.

other regulations which were promulgated to implement section 5 of the Outer Continental Shelf Lands Act (OCSLA).[1] Section 5 of the OCSLA requires open-access, nondiscriminatory transportation of natural gas on the Outer Continental Shelf (OCS). The pertinent regulations were promulgated in Order No. 509,[2] and are contained in Subpart K of part 284 of the Commission's regulations.[3] The amendments to the regulations will become effective on November 1, 1993.

Among other things, the Commission is removing the regulations governing the OCSLA capacity allocation program,[4] and the regulation which provides for abandonment authority.[5] In Order No. 636,[6] the Commission established a capacity release program which is applicable for all transportation services provided by interstate pipelines that hold a Part 284 blanket transportation certificate, including OCS transactions. With implementation of the Order No. 636 capacity release program, the Order No. 509 capacity allocation program will become obsolete. Therefore, the Commission is removing the Order No. 509 capacity allocation regulations. However, existing Order No. 509 allocations will be subsumed by the pipeline's new Order No. 636 capacity release program so that these existing arrangements will not be unnecessarily disturbed.

As discussed more fully below, this rulemaking also resolves the matters raised in a related court order remanding certain orders to the Commission for further consideration.[7] In the remanded orders, the Commission had applied the newly-promulgated Order No. 509 regulations to Tennessee Gas Pipeline Company (Tennessee).

II. Reporting Requirements

By this final rule, the Commission is amending its regulations to eliminate duplicative requirements that currently exist under the Order No. 509 capacity allocation program and under the Order No. 636 capacity release program. The Order No. 636 regulations established a capacity release program applicable to all interstate transactions, both offshore and onshore; therefore, the information requirements under Order No. 509 have been subsumed by the Order No. 636 regulations. Thus, there is no change in the OCS information requirements and no change in reporting burden.

The Commission estimates that the public reporting burden will not change with the adoption of this final rule. The current average burden estimate of 225.34 hours per response/filling under FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal), (1902–0154) is representative of the burden required for an average non-formal rate filing. The per filing estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden associated with the collection of OCS transportation information, was estimated to total 10,320 hours when Order No. 509 was first issued. The only Order No. 509 burden was a one-time filing that has since been completed. That burden reduction has been reflected in previous FERC–545 submissions to the Office of Management and Budget (OMB). Thus, the one-time Order No. 509 burden is not part of the current FERC–545 total burden. The total burden for 100 pipelines companies providing information under FERC–545 is expected to remain unchanged at 757 filings and 170,585 hours annually.

The Commission is notifying OMB of this amendments. Interested persons may send comments regarding this burden estimate or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of this order can also be sent to the Office of Information and Regulatory Affairs of OMB [Attention: Desk Officer for Federal Energy Regulatory Commission (202) 395–6880].

III. Background

On April 21, 1993, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this docket[8] which proposed to amend the Commission's existing regulations to conform with the regulations adopted in Order No. 636. A companion order to the NOPR was issued[9] which determined that the matters remanded to the Commission by the Court of Appeals for the District of Columbia Circuit would be resolved by this rulemaking.[10]

In the NOPR, the Commission ascertained that, as a result of the implementation of the Order No. 636 capacity release programs, the OCSLA capacity allocation program would become redundant. Also, since the Order No. 636 capacity release program is applicable to all interstate transactions, including those occurring on the OCS, the Commission further determined that conflict and/or confusion could arise as to which program should be applied to OCS transactions. The Commission decided that one uniform capacity release program applicable to all interstate transactions, offshore and onshore, would best serve the public interest. Hence, the Commission proposed to remove the regulations authorizing the Order No. 509 capacity allocation programs.[11]

The Commission also proposed to remove the Order No. 509 regulations, provided at 18 CFR 284.305, which required OCS pipelines to make certain rate filings needed to implement Order

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[1] 43 U.S.C. 1334.

[2] Order No. 509, Interpretation of, and Regulations Under, Section 5 of the Outer Continental Shelf Lands Act (OCSLA) Governing Transportation of Natural Gas by Interstate Governing Transportation of Natural Gas by Interstate Natural Gas Pipelines on the Outer Continental Shelf, FERC Stats. & Regs. Preambles ¶ 30,842 (1988), 53 FR 50,925 (Dec. 9, 1988), *order on rehearing*, Order No. 509–A, FERC Stats. & Regs. Preambles ¶ 30,847 (1989), 54 FR 8301 (Feb. 17, 1989).

[3] 18 CFR 284.301–284.305.

[4] 18 CFR 284.304.

[5] 18 CFR 284.303(c)(3).

[6] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13,267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (April 8, 1992); *Order on reh'g*, Order No. 636–A, 57 FR 36,128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (August 3, 1992), *order on reh'g*, Order No. 636–B, 57 FR 57,911 (December 8, 1992), 61 FERC ¶ 61,272 (1992).

[7] *Tennessee Gas Pipeline Company* v. *FERC*, 972 F.2d 376 (D.C. Cir. 1992).

[8] Revisions to Regulations Implementing Section 5 of the Outer Continental Shelf Lands Act, 58 FR 25583 (Apr. 27, 1993), corrected, 58 FR 27691 (May 11, 1993), III FERC Stats. & Regs. Preambles ¶ 32,494 (Apr. 21, 1993). Regs. Preambles at 30,552–553. However, the OCS capacity allocation program, which was authorized by regulation as opposed to Commission order, remained intact.

[9] Tennessee Gas Pipeline Company, 63 FERC ¶ 61,096 (1993).

[10] However, the companion order directed Tennessee to inform the Commission, in its comments to the NOPR, if remaining matters need to be resolved. No requests for rehearing of the companion order ware filed.

[11] It should be noted here that the Commission issued a companion order to Order No. 636 which required the modification of all pre-Order No. 636 capacity brokering, capacity release, and upstream pipeline capacity assignment programs to bring those programs into conformance with the Order No. 636 capacity release program. That Order resolved any disparity between the Order No. 636 capacity release program and existing programs which had been authorized by Commission order. Algonquin Gas Transmission Co., *et al.*, 59 FERC ¶ 61,032 (1992), *Reh'g denied*, 60 FERC ¶ 61,113 (1992). *See* Order No. 636, III FERC Stats. & Regs. Preambles at 30, 416; Order No. 636–A, III FERC Stats. &

No. 509. The Commission concluded that, since all existing OCS interstate pipelines now have rates on file for transportation service under the part 284 blanket certificates issued to them in Order No. 509, these filing requirements would no longer be needed.

However, the Commission emphasized that it was not proposing to rescind or alter the requirement that new interstate pipelines that transport natural gas on the OCS offer open-access transportation under a part 284 blanket transportation certificate. Under the Commission's proposal, that requirement would continue to be imposed on all OCS pipelines, as required by Commission policy and in order to ensure compliance with the open-access, nondiscriminatory standard for OCS transportation required by section 5 of the OCSLA.

IV. Comments

In response to the NOPR, comments were filed by three parties: High Island Offshore System (HIOS), U–T Offshore System (U–TOS), and Tennessee. No reply comments were filed.

VI. Discussion

A. Effectiveness of Blanket Certificates Issued in Order No. 509

HIOS and U–TOS request that the Commission clarify and confirm that the part 284, Subpart G blanket certificates previously issued to all OCS pipelines in Order No. 509 remain effective despite the proposed revisions to the regulations. We will grant this request by clarifying that the revisions to the regulations made in this rule do not affect the validity of the certificates issued in Order No. 509.

The regulations being removed were needed for the initial implementation of the requirement of the OCSLA that interstate pipelines provide open access transportation on the OCS. Since all existing OCS interstate pipelines were issued Part 284, Subpart G blanket transportation certificates in Order No. 509, and now have rates on file for service under those certificates, the regulations being removed have become superfluous. Of course, as stated above, any new OCS interstate pipeline would be required to provide open access under a Part 284 blanket transportation certificate in order to conform to the requirements of section of the OCSLA.

B. Abandonment Authorization

Section 284.303(c)(3) of the regulations was promulgated in order to give additional abandonment authorization to OCS blanket certificate holders. This additional abandonment authority was needed to facilitate the OCS allocation program. Since we are removing the OCS allocation program from the regulations, this additional authority is no longer warranted. Therefore, by removing § 284.303 (c)(3) from the regulations, we are rescinding the abandonment authorization provided to OCS pipelines.

C. Existing Order No. 509 Capacity Allocations

HIOS and U–TOS request that we clarify and confirm that capacity relinquishment implemented under the Order No. 509 regulations remain authorized despite the discontinuation of those regulations. We will grant the requests.

In *Algonquin*,[12] the Commission required the modification of all pre-Order No. 636 capacity brokering, capacity release, and upstream pipeline capacity assignment programs to bring those programs into conformance with the Order No. 636 capacity release program. The *Algonquin* order also addressed the treatment of pre-existing capacity assignments and reassignments. We will follow the reasoning expressed in that order.

Accordingly, existing Order No. 509 capacity allocations will be subsumed with the pertinent pipeline's new Order No. 636 capacity release program. The existing Order No. 509 capacity allocations will be allowed to continue to be effective for the term agreed upon between the parties. However, once a pipelines's Order No. 636 capacity release program goes into effect, the pipeline must post notice of all preexisting Order No. 509 capacity allocations on its electronic bulletin board.

C. Termination Date for Order No. 509 Capacity Allocation Programs

HIOS and U–TOS request that we establish November 1, 1993, as the termination date for the Order No. 509 capacity allocation programs in order to ensure an orderly transition between the Order No. 509 programs and the Order No. 636 programs. We agree that a date certain should be established for termination so that there is no break between the two programs. However, it is important that this date not precede the effective date of the tariff filings establishing the Order No. 636 capacity release programs. Otherwise, a gap in time would occur when capacity releasing could not be performed under any program, *i.e.*, the Order No. 509 program would have been terminated, but the Order No. 636 program may not have become effective as yet for the pertinent pipeline.

It is anticipated that most interstate pipelines will have effective tariffs with capacity release provisions by November 1, 1993. Since the effective date of this rule will operate to terminate the Order No. 509 capacity allocation programs, we will establish November 1, 1993, as the date upon which the amendments to the regulations contained in this rule will become effective. After the November 1 date, capacity allocations must be formulated under the Order No. 636 programs. However, new capacity allocations may be made under the Order No. 509 capacity allocation programs until that time. Further, if the November 1 effective date interferes with ongoing transactions for the few pipeline whose Order No. 636 tariffs become effective after November 1, the pipeline may notify the Commission and request appropriate relief.

D. Individually Certificated (Part 157) Services

Tennessee states that its difficulties with the Order No. 509 capacity allocation program, which ultimately resulted in the court remand discussed above, are resolved by the revisions to the regulations proposed in the NOPR "only if the Commission approves Tennessee's proposed procedure for shippers served under individually certificated rate schedules to convert to Tennessee's part 284 firm transportation rate schedule, as set forth in Tennessee's restructuring filing in Docket No. RS92–23." Otherwise, Tennessee argues, part 157 services (which are not eligible for Order No. 636 capacity release) would remain in place and hinder open-access transportation on the OCS.

It appears that we have come full circle on this issue. It was this very concern for open-access transportation on the OCS (as mandated by the OCSLA) that prompted us to encourage the abandonment of part 157 services where necessary to facilitate the Order No. 509 capacity allocation program. Under that scenario, once the part 157 service was abandoned, new service would be provided under the pipeline's part 284 blanket transportation certificate and the pipeline would charge its part 284 rates for service. However, Tennessee balked at this approach because it appeared to require a pipeline to abandon services and rates the pipeline might prefer to retain. Therefore, Tennessee argued to the Court of Appeals for the District of Columbia Circuit that we have no authority to *require* and unwilling

[12] *Supra* note 11.

pipeline such as Tennessee to abandon a certificated service. Unable to reach a definitive conclusion based on the record before it, the court remanded the matter to the Commission for further review.

Tennessee now argues that unless individually certificated services are converted to part 284 service: (1) The potential exists for discriminatory treatment among similarly situated shippers, (2) to the extent that the costs of part 157 service have been rolled into system-wide costs, the part 157 shipper would pay general, rolled-in rates, but would not receive the advantages of Part 284 service, (3) Part 157 shippers would escape responsibility for their fair share of Order No. 636 transition costs, and (4) merchants serving customers with part 157 transportation service would be able to command higher netback wellhead prices because the transportation cost would be artificially lower. We need not address these specific assertions directly because part 157 services may be converted to part 284 services only upon consent of the pipeline and its customer. Therefore, we encourage Tennessee to negotiate directly with its customers to encourage conversion part 284 services and thereby avoid the potential for types of abuses Tennessee perceives.

Tennessee argues that its problems with the Order No. 509 capacity allocation program are resolved only if the procedure it has proposed in its restructuring proceeding is approved by the Commission. It is unclear from Tennessee's request for rehearing how the specifics of a conversion procedure undertaken within the context of an Order No. 636 restructuring proceeding relate to the rescission of the Order No. 509 capacity allocation program. However, this is not a matter appropriately addressed here. Instead, the specifics of the conversion procedure must be, and currently are being, addressed in Tennessee's restructuring docket.[13]

VII. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any Commission action that may have a significant adverse effect on the human environment.[14] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment. The action taken here falls within the categorical exemptions provided in the Commission's regulations.[15] Therefore, an environmental assessment is unnecessary and was not prepared in this proceeding.

VIII. Information Collection Requirement

Office of Management and Budget (OMB) regulations require that OMB approve certain information and recordkeeping requirements imposed by agency rules. The information collection requirements in this rule have not changed from those proposed in the Notice of Proposed Rulemaking published in the Federal Register on April 27, 1993 (58 FR 25583), as corrected on May 11, 1993 (58 FR 27691). Therefore, this rule does not have to be submitted to OMB for review. A copy will be sent to OMB for informational purposes only.

The information collection requirement amended by this order is FERC–545, Gas Pipeline Certificates: Rate Change (Non-Formal) (1902–0154). The information collected under FERC–545 enables the Commission to carry out its legislative mandate and regulatory responsibilities under the OCSLA and the NGA. Specifically, the Commission's Office of Pipeline and Producer Regulation uses the data to ensure that all rates and charges in proposed tariff sheets are just and reasonable in light of the transportation activities authorized for OCS pipelines.

The Commission is submitting notification of this rule to OMB. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of the subject order may also be sent to the Office of Information and Regulatory Affairs at OMB [Attention: Desk Officer for Federal Energy Regulatory Commission, (202) 395–6880].

List of Subjects 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 284, chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

2. Section 284.303 is revised to read as follows:

§ 284.303 OCS blanket certificates.

Every OCS pipeline [as that term is defined in § 284.302(b)] is required to provide open-access, nondiscriminatory transportation service pursuant to a blanket transportation certificate issued under subpart G of this part.

§§ 284.304 and 284.305 [Removed]

3. Sections 284.304 and 284.305 are removed.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24925 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. 92–25]

RIN 2125–AD01

National bridge inspection Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is adopting, as final, a current interim final rule that specifies a maximum frequency at which highway bridges must be inspected under the National Bridge Inspection Standards (NBIS). This final rule establishes 4 years as the maximum period between inspections. However, States must inspect bridges at intervals not to exceed 2 years unless the FHWA grants an exemption. The NBIS regulation permits an exemption from the 2-year inspection frequency for certain types or groups of bridges where past inspection reports and favorable experience and analysis justify the increased interval of inspection. A State proposing to inspect some bridges at

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[13] *See* Tennessee Gas Pipeline Company, 64 FERC ¶61,020 (1993). In that order, we denied Tennessee's request that it be allowed to require customers to convert part 157 services to part 284 services. Observance of that directive will occur in Tennessee's subsequent compliance filing, and will be addressed in our next order in the restructuring proceeding.

[14] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles ¶30,783 (1987).

[15] 18 CFR 380.4(a)(27).

intervals exceeding 2 years must submit a detailed proposal and supporting data to the FHWA for approval. In such cases, the interval between inspections would be determined on the basis of the State's proposal and supporting data, but is not to exceed 4 years.

DATES: This regulation is effective October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. David H. Densmore, Bridge Management Branch, Bridge Division, Office of Engineering, (202) 366–4617; or Ms. Vivian Philbin, Office of Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: The NBIS for bridges on all public roads are set forth in 23 CFR part 650, subpart C. Section 650.305 specifies the frequency at which bridges must be inspected. Under § 650.305(a), the normal maximum interval between inspection is 2 years. The FHWA's rulemaking of August 26, 1988 (53 FR 32611), added provisions for varying from this normal frequency for certain types or groups of bridges. Section 650.305(b) requires more frequent inspection than at 2-year intervals for certain types and groups of bridges which, because of such factors as age, traffic characteristics, state of maintenance, or known deficiencies, require closer monitoring. Section 650.305(c) permits the maximum interval between inspections to exceed 2 years for certain types or groups of bridges where past inspection reports and favorable experience and analysis justify the increased interval of inspection. If a State proposes to inspect some bridges at greater than the specified 2-year interval, the State must submit a detailed proposal and supporting data to the FHWA, and obtain FHWA approval. Although the preamble to the 1988 rulemaking suggested a maximum of 4 years between inspections, the rule itself did not establish a maximum interval. The FHWA's November 9, 1992, interim final rule (57 FR 53278) requested comments on an amendment to § 650.305(c) that specified, effective December 9, 1992, that 4 years is the maximum interval between inspections. This action was taken in response to the decision in *Center for Auto Safety* v. *FHWA*, 956 F.2d 309 (D.C. Cir. 1992), in which the U.S. Court of Appeals for the D.C. Circuit ruled that the current regulation was not valid because it failed to "establish" any "maximum time period between inspections" as required by 23 U.S.C. 151(b)(2).

Discussion of Comments

Eight commenters responded to the rulemaking. Comments were received from 5 State Departments of Transportation, 1 consulting firm that performs bridge inspections, and 2 safety groups.

Two safety groups, the Advocates for Highway and Auto Safety (Advocates), and the Center for Auto Safety (CAS), in letters to the Federal Highway Administrator, opposed the rulemaking. These letters were added to the FHWA docket. The Advocates and the CAS subsequently submitted separate comments directly to the docket.

Comment 1

Comments from the State Departments of Transportation and the consulting firm supported the rulemaking. One State that had obtained approval from the FHWA for inspecting some 527 bridges at 4-year intervals indicated that its experience reinforced its belief that the 4-year maximum interval is adequate for certain bridges. Two States that have not applied for an exemption to the 2-year inspection interval under § 650.305(c) indicated that they may take advantage of the provision as bridge management systems are implemented. Two other States indicated that the flexibility provided by the rule should permit them to better direct their financial and personnel resources. One State suggested a need for more specific guidelines for selecting candidate bridges for inspection intervals longer than 2 years, and one State suggested changes to the current guidelines.

Response

The current guidelines for selecting candidate bridge projects are contained in the FHWA's September 16, 1988, Technical Advisory T 5140.21. Paragraph 5a(1) identifies classes of bridges that, in general, would be excluded from consideration for inspection intervals longer than 2 years. Bridges that are outside of the excluded classes could become candidates for inspection at intervals exceeding 2 years but not exceeding 4 years under the application process. The FHWA has no plans to modify the current guidelines for selecting candidate bridge projects.

Comment 2

The consulting firm indicated that there are cases where, in its judgment, it is not necessary to inspect at 2-year intervals. Several examples were given. The firm suggested that some agency at the State level should be allowed to establish criteria for extension of inspection intervals on rural bridges.

Response

Section 650.305(c) does not extend the authority to the States to approve inspections at intervals greater than 2 years. Under § 650.305(c) a State may develop and submit to the FHWA proposed criteria and supporting data for extending inspection intervals.

Comment 3

The Advocates and the CAS urged the FHWA not to proceed with a final rule prior to receipt of full public comment. The Advocates cited increased funding under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, and the current emphasis on maintaining cost-effective programs as reasons not to proceed. The Advocates also commented that providing an opportunity for comment subsequent to the issuance of an interim final rule violates the notice and comment requirements applicable to informal rulemaking. The group indicated that it was not afforded the opportunity to comment on the original rulemaking because it was not in existence at that time (1987).

Response

As stated in the preamble to the November 9, 1992, interim final rule, the FHWA decided to amend the bridge regulation through an interim final rule without further prior notice and additional opportunity for comment because inspection frequency was the subject of public comment in an earlier rulemaking. A 60-day comment period was also provided in the interim final rule published on November 9, 1992.

Comment 4

The Advocates commented that lengthening the time between inspections will increase the cost of bridge work when it is undertaken.

Response

The FHWA disagrees with the comment. Bridge maintenance and repair costs would not be affected since eligible bridges would, in general, not require special or preventive maintenance in the timeframe between inspections.

Comment 5

The Advocates commented that the FHWA's exemption criteria should consider the importance of a bridge to the surrounding community and the length of detour routes.

Response

Bridge importance is not listed in the exemption criteria (Paragraph 5a of the FHWA's September 16, 1988, Technical Advisory T 5140.21 on Revisions to the National Bridge Inspection Standards (NBIS)) because the goal of the NBIS is to assure the proper safety inspection of all bridges. Exemptions are not permitted where structural reliability is an issue, irrespective of the bridge's location or perceived importance.

Comment 6

The Advocates commented concerning the need, in its view, for the States to report on how they are redirecting inspection resources as a result of using longer inspection intervals on some bridges.

Response

Several States have indicated that the provisions of § 650.305(c) would enable them to use their inspection resources more effectively. However, the FHWA has no plans to require States to track and report how bridge inspection resources are being used. The FHWA believes that this would divert needed resources to accounting exercises and report writing without a concomitant safety benefit. Also, changes in inspection and reporting practices that are taking place as a result of bridge management systems would frustrate any attempt to track and compare current and historical inspection efforts.

Comment 7

The Advocates commented that there should be separate State reporting of the conditions of bridges inspected on 4-year intervals, and criteria governing the circumstances under which a bridge must be returned to a 2-year inspection interval.

Response

The condition of bridges that are permitted to be inspected at intervals exceeding two years are reported to the FHWA in a manner that permits separate review whenever desired. To qualify for an inspection interval exceeding two years, a bridge must meet criteria approved by the FHWA. These criteria are approved on the basis of the State's detailed proposal and supporting data which must be provided to the FHWA at the time of application. If, as a result of an inspection, a bridge no longer meets the approved criteria, it must be returned to an appropriate inspection interval not to exceed 2 years.

Comment 8

The CAS urged the FHWA to reconsider and withdraw the interim final rule in the light of the agency's 1983 benefit/cost analysis that, the CAS suggests, supports the universal application of a 2-year inspection rule.

Response

The conclusion that the FHWA's 1983 benefit/cost analysis supports the universal application of a 2-year inspection rule is not accurate. The 1983 cost analysis provided a rough estimate of the benefits to the public from application of the NBIS. It has no direct bearing on this rulemaking action since it did not evaluate the benefits and costs of altered inspection frequencies.

Comment 9

The CAS commented that the FHWA has not supplied a viable benefit/cost analysis that supports the interim final rule, i.e., estimated the cost to society for increasing the inspection interval, either in economic terms or in increased injuries or fatalities. CAS also commented that the FHWA has not explained how the use of inspection resources would, in fact, be redistributed as a result of the granting of 4 year inspection intervals. It expressed concern that resources now spent on inspection may no longer be used for bridge inspection.

Response

The FHWA stated its conclusions with regard to the effects on public safety in the preamble to the November 9, 1992, rulemaking. Permitting up to a 4-year interval between inspections under the exemption process outlined will not present a risk to public safety. 57 FR 53278, 53281. Changes in the cost of inspection will depend on the extent to which States utilize the § 650.305(c) exemption provision and how they choose to redistribute those resources. As previously noted, State comments indicate that the added flexibility would permit them to better direct these resources.

Comment 10

The CAS commented that in issuing an interim final rule in advance of public comment the FHWA has proceeded on a predetermined course, is relying on a stale docket, and is relying heavily on new information that has not been examined or explained by the agency.

Response

The FHWA's decision to proceed in issuing the interim final rule is well supported by the information available on bridge deterioration rates and by public comment. The 1988 rulemaking on frequency of inspection was based on extensive review and evaluation of the available information which included the views of 46 commenters and several studies. Studies that were examined by the FHWA in connection with the 1988 rulemaking are identified in the November 9, 1992, rulemaking preamble. Several studies that were published since 1988 are also listed. The FHWA relied on the information that was published prior to 1988 as the basis for its interim rule. Studies which were published since 1988 were identified to provide an up-to-date list of relevant information and to document the administrative record as to the information which the FHWA has examined as a part of the rulemaking. The studies published since 1988 corroborate the findings of earlier studies and they fully support the determinations of the 1988 rulemaking. This rulemaking action is based on all information cited in FHWA's rulemaking of August 26, 1988, of November 9, 1992, and on an analysis of the comments that were received in response to the November 9, 1992, rulemaking and summarized herein.

Comment 11

The CAS commented that the FHWA has made no attempt to provide current data or analysis of the experience of the States that have been operating under a 4-year inspection frequency in support of the rulemaking.

Response

The time that elapsed between the first FHWA approvals to inspect some bridges at intervals exceeding 2 years, and the time those approvals were withdrawn, was insufficient for the States to gain much experience in operating under a 4-year inspection frequency. The earliest FHWA approval date was August 22, 1990; withdrawal of all approvals took place on May 8, 1992, following the appellate court's remand of the 1988 rulemaking to the FHWA for further proceedings. Accordingly, there is no meaningful data regarding any experience with a 4-year inspection interval.

Comment 12

The CAS indicated concern that the appellate court opinion in *Center for Auto Safety* v. *FHWA*, concerning the non-applicability of § 650.305(a) to underwater bridge members, leaves the impression that the underwater portion of bridge supports are not a part of the bridge inspection program. The CAS suggests that the FHWA amend the

definition of "bridge," in § 650.301 to undo this impression.

Response

The FHWA believes that the decision in *Center for Auto Safety* v. *FHWA* in upholding § 650.303(e)(2) leaves no doubt that underwater members, inspected under 650.303(e)(2), remain part of the national bridge inspection program, regardless of how the term "bridge" is defined in § 650.301.

In 1988, the FHWA recognized a need for specific requirements for underwater inspections, but because these inspections were not the general practice in most States, the FHWA lacked sufficient historical data to determine an appropriate maximum inspection interval. Lacking factual data, the FHWA drew from the collective expertise and judgment of professional bridge, hydraulic, and geotechnical engineers by adopting the 5-year standard set forth in relevant guidelines established by the American Association of State Highway and Transportation Officials as the maximum interval between underwater inspections.

The appellate court declined to find, as CAS argued it should, that the FHWA's action in adopting this 5-year standard was arbitrary and capricious and constituted a relaxation of prior standards. (CAS claimed § 650.305(a) already required underwater members to be inspected every 2 years). The appellate court found that this reliance on policy considerations in the absence of factual data was justified and it upheld § 650.303(e)(2) against CAS' challenge that the agency acted arbitrarily and capriciously in establishing the 5-year standard.

With the addition of § 650.303(e)(2) to the NBIS in 1988, and the court's action upholding this section, the FHWA believes there is no need for further clarification on the issue of whether underwater bridge supports are included in the bridge inspection program, such as an amendment to § 650.301.

Based on its analysis of all the comments received and the various studies cited above, and for the reasons discussed above and in the preamble to the November 9, 1992, interim final rule, the FHWA concludes that establishing a 4-year maximum interval between inspections under § 650.305 is warranted.

Rulemaking Analyses and Notices

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

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

This final rule is made effective upon publication. As a matter of law, the interim final rule on the frequency of bridge inspections has been in effect since December 9, 1992. This final rule makes no changes on that interim final rule and merely informs the public that the interim final rule remains unchanged. Therefore, the FHWA finds that good cause exists to dispense with the 30-day delay on the effective date normally required under 5 U.S.C. 553(d).

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rule on small entities. This rule would affect State and local governmental entities responsible for bridge inspection activities. This rule provides such governmental entities with flexibility to extend the period between bridge inspections subject to stringent conditions and FHWA approval. The FHWA believes that the increased inspection period permitted by this rule would be available for a very limited number of bridges nationwide, and that relatively few governmental entities will be affected. Based on the evaluation, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980. (44 U.S.C. 3501–3520)

National Environmental Policy Act

The agency has analyzed this section for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Services Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Highways and roads, Grant programs—transportation, Reporting and recordkeeping requirements.

Issued on: October 1, 1993.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing and under the authority of 23 U.S.C. 315, the interim rule amending 23 CFR part 650, subpart C, which was published at 57 FR 53278, November 9, 1992, is adopted as final without change.

[FR Doc. 93–24882 filed 10–8–93; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Regulatory Program; Revegetation Standards for Success, Roads, Impoundments and Siltation Structures, Prime Farmland, Coal Preparation Plants, and Incidental Coal Extraction Exemption; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published on Tuesday, July 7, 1992, (57 FR 29788–29794). The

regulations reflect the approval by OSM of amendments to Virginia's Permanent Regulatory Program.

EFFECTIVE DATE: July 7, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Drawer 1217, Powell Valley Square Shopping Center, Room 220, Big Stone Gap, Virginia 24219; Telephone (703) 523–4303.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections affect the permanent program performance standards for surface and underground mining activities as set forth in the Virginia Regulatory Program at § 480–03–19.816.116 and § 480–03–19.817.116.

Need for Correction

As published at 47 FR 29792–29794, 30 CFR 946.15(ff) failed to contain references to two sections of the Virginia Regulatory Program which were approved by OSM, as discussed in Finding III.B.1 at 57 FR 29790.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, surface mining, underground mining.

Dated: October 4, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, part 946 of the Code of Federal Regulations is corrected by making the following correcting amendments:

PART 946—VIRGINIA

1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 et. seq.

2. In § 946.15(ff), the following sections of the Virginia Permanent Regulatory Program are added in numerical order to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(ff) * * *

§ 480–03–19.816.116(b)(3)(v)(C) * * * Permanent Program Performance Standards-Surface Mining Activities; Revegetation: Standards for Success.

§ 480–03–19.817.116(b)(3)(iv)(C) * * * Permanent Program Performance Standards-Underground Mining Activities; Revegetation: Standards for Success.

* * * * *

[FR Doc. 93–24797 Filed 10–8–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 185

[DoD Directive 3025.1]

Military Support to Civil Authorities (MSCA)

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This part consolidates all policy and responsibilities previously known as "Military Assistance to Civil Authorities (MACA)," which applies to disaster-related civil emergencies within the United States, its territories, and possessions, with those related to attacks on the United States, which previously were known as "Military Support to Civil Defense (MSCD)." This provision guides Department of Defense cooperation with Federal Emergency Management Agency (FEMA) for response to major disasters or emergencies in accordance with the Stafford Act, and for support to Federal or State civil defense programs under the authority of the Federal Civil Defense Act. It continues the use of DoD Regional Military Emergency Coordinator (RMEC) teams, to facilitate planning with civil agencies and response to any national security emergency. The Secretary of Army is designated as the DoD Executive Agent for MSCA.

EFFECTIVE DATE: This rule is effective January 15, 1993.

FOR FURTHER INFORMATION CONTACT: M. Alston, (703) 697–5454.

SUPPLEMENTARY INFORMATION:

Executive Order 12291, "Federal Regulation

It has been determined that 32 CFR part 185 is not a major rule. The rule is a regulation issued with respect to a military function of the United States.

The rule does not:

(1) Have an annual effect on the economy of $100 million or more.

(2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Have a significant adverse effect on competition, employment, investment, productivity, or innovation."

Public Law 96–354, "Regulatory Flexibility Act

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because the rule is a regulation issued with respect to a military function of the United States. The rule does not have a significant economic impact on a substantial number of small entities. The primary effect of the rule is the consolidation of military policy and responsibilities as they apply to disaster-related civil emergencies, civil defense programs and national security emergencies within the United States. The rule guides Department of Defense cooperation with the Federal Emergency Management Agency (FEMA) and facilitates planning with civil agencies."

Public Law 96–511, "Paperwork Reduction Act

It has been certified that 32 CFR part 185 does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520)."

List of Subjects in 32 CFR Part 185

Armed forces, Civil defense.

Accordingly, 32 CFR part 185 is revised to read as follows:

PART 185—MILITARY SUPPORT TO CIVIL AUTHORITIES (MSCA)

Sec.

185.1 Purpose.
185.2 Applicability and scope.
185.3 Definitions.
185.4 Policy.
185.5 Responsibilities.
185.6 Information requirements.

Authority: 50 U.S.C. 2251, as amended; E.O. 12148, 3 CFR 1979 Comp. p. 412.

§ 185.1 Purpose.

This part:

(a) Consolidates all policy and responsibilities previously known as "Military Assistance to Civil Authorities (MACA)," applicable to disaster-related civil emergencies within the United States, its territories, and possessions under DoD Directive 3025.1 [1] with those related to attacks on the United States, which previously were known as "Military Support to Civil Defense (MSCD)" under DoD Directive 3025.10.[2]

(b) Provides for continuation of the DoD Regional Military Emergency

[1] The May 23, 1980 edition of this Directive has been canceled by DoD Directive 3025.1 dated January 15, 1993.

[2] Canceled by DoD Directive 3025.1, dated January 15, 1993.

Coordinator (RMEC) teams, previously developed under DoD Directive 5030.45 [3], to facilitate peacetime planning for MSCA and to provide trained teams of DoD liaison personnel to represent essential DoD Components, as appropriate, for response to any national security emergency.

(c) Constitutes a single system for MSCA, by which DoD Components (as defined in § 185.2) shall plan for, and respond to, requests from civil government agencies for military support in dealing with the actual or anticipated consequences of civil emergencies requiring Federal response, or attacks, including national security emergencies as defined in E.O. 12656, 53 FR 47491, 3 CFR 1988 Comp., p. 585.

(d) States the policy and responsibilities by which the Department of Defense responds to major disasters or emergencies in accordance with the Stafford Act, as amended, and supports the national civil defense policy and Federal or State civil defense programs, in cooperation with the Federal Emergency Management Agency (FEMA), under the authority of The Federal Civil Defense Act of 1950.

(e) Designates the Secretary of the Army as the DoD Executive Agent for MSCA.

(f) Authorizes the publication of DoD 3025.1–M, "DoD Manual for Civil Emergencies," consistent with DoD 5025.1–M.[4]

§ 185.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard (when it is operating, or planning for operations, as a Service in the Navy).

(b) Shall govern MSCA activities of all DoD Components in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and U.S. territories and possessions.

(c) Does not apply to foreign disasters covered by DoD Directive 5100.46.

(d) Focuses on the assignment and allocation of DoD resources to support civilian authorities during civil emergencies arising during peace, war, or transition to war.

(e) Does not integrate contingency war planning as a subelement of MSCA, and does not relieve the Chairman of the Joint Chiefs of Staff of his authority to supervise contingency planning.

(f) Does not include military support to civil law enforcement. (See § 185.4(b).)

§ 185.3 Definitions.

Attack. Any attack or series of attacks by an enemy of the United States causing, or that may cause, substantial damage or injury to civilian property or persons in the United States (or its territories) in any manner, by sabotage or by the use of bombs, shellfire, or nuclear, radiological, chemical, bacteriological, or biological means, or other weapons or processes (Federal Civil Defense Act of 1950).

Civil defense. All those activities and measures designed or undertaken to:

(1) Minimize the effects upon the civilian population caused, or that would be caused, by an attack upon the United States or by a natural or technological disaster;

(2) Deal with the immediate emergency conditions that would be created by any such attack or natural or technological disaster; and

(3) Effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by any such attack or natural or technological disaster.

Civil disturbances. Group acts of violence and disorders prejudicial to public law and order within the 50 States, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions and territories, or any political subdivision thereof. The term *civil disturbance* includes all domestic conditions requiring the use of Federal Armed Forces, as more specifically defined in DoD Directive 3025.12.[5]

Civil emergency. Any natural or manmade disaster or emergency that causes or could cause substantial harm to the population or infrastructure. This term can include a "major disaster" or "emergency," as those terms are defined in the Stafford Act, as amended, as well as consequences of an attack or a national security emergency. Under 42 U.S.C. 5121, the terms "major disaster" and "emergency" are defined substantially by action of the President in declaring that extant circumstances and risks justify his implementation of the legal powers provided by those statutes.

Civil emergency preparedness. The non-military actions taken by Federal agencies, the private sector, and individual citizens to meet essential human needs, to support the military effort, to ensure continuity of Federal authority at national and regional levels, and to ensure survival as a free and independent nation under all emergency conditions, including a national emergency caused by threatened or actual attack on the United States.

Civil government resources. Civil resources owned by, controlled by, or under the jurisdiction of civilian agencies of the U.S. Government, or of State and local government agencies.

Civil resources. Resources that normally are not controlled by the Government, including workforce, food and water, health resources, industrial production, housing and construction, telecommunications, energy, transportation, minerals, materials, supplies, and other essential resources and services. Such resources cannot be ordered to support needs of the public except by competent civil government authority.

Continental United States Airborne Reconnaissance for Damage Assessment (CARDA). A system of aerial reconnaissance of the Continental United States for determining the effects of a nuclear attack. CARDA integrates the combined resources of all government agencies and Military Services for the National Command Authority.

Defense Coordinating Officer (DCO). A military or civilian official of any DoD Component, who has been designated by the DoD Executive Agent to exercise some delegated authority of the DoD Executive Agency to coordinate MSCA activities under this Directive. The authority of each DCO will be defined in documentation issued or authorized by the DoD Executive Agent, and will be limited either to the requirements of a specified interagency planning process or to a specified geographic area or emergency. (The DoD Executive Agent also may delegate authority to designate DCOs to any DoD Planning Agent specified in this part.)

Defense Emergency Response Fund. Established by Pub. L. 101–165 (1989). That law provides that, "The Fund shall be available for providing reimbursement to currently applicable appropriations of the Department of Defense for supplies and services provided in anticipation of requests from other Federal departments and agencies and from State and local governments for assistance on a reimbursable basis to respond to natural

[3] See footnote 2 to § 185.1(a).

[4] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[5] See footnote 4 to § 185.1(f).

or manmade disasters. The Fund may be used upon a determination by the Secretary of Defense that immediate action is necessary before a formal request for assistance on a reimbursable basis is received." The Fund is applicable to Foreign Disaster Assistance under DoD Directive 5100.46 [6] and to MSCA under the authority of this part.

DoD executive agent. The individual designated by position to have and to exercise the assigned responsibility and delegated authority of the Secretary of Defense, as specified in this part.

DoD planning agent. An individual designated by position to facilitate and coordinate MSCA contingency planning (and MSCA operations when ordered) by all DoD Components within an assigned geographic area in accordance with the requirements of this part.

DoD resources. Military and civilian personnel, including Selected and Ready Reservists of the Military Services, and facilities, equipment, supplies, and services owned by, controlled by, or under the jurisdiction of a DoD Component.

Federal function. Any function, operation, or action carried out under the laws of the United States by any department, agency, or instrumentality of the United States, or by an officer or employee thereof.

Federal property. Property that is owned, leased, possessed, or occupied by the Federal Government.

Federal Region. A grouping of States and territories of the United States, by which FEMA coordinates responsibilities of the State governments with those of Federal departments and agencies, for disaster relief, civil defense, and planning for both civil and national security emergencies. These regions are sometimes referred to as "FEMA Regions" to distinguish them from any one of the various regional alignments of other Federal Departments and Agencies, all of which are circumscribed by FEMA's coordination authority. Today, there are ten Federal Regions, but the term is used generally to facilitate MSCA regardless of the number of Federal Regions at any time.

Federal response plan. The inter-departmental planning mechanism, developed under FEMA leadership, by which the Federal Government prepares for and responds to the consequences of catastrophic disasters. Federal planning and response are coordinated on a functional group basis, with designated lead and support agencies for each identified functional area.

[6] See footnote 4 to § 185.1(f).

Immediate response. Any form of immediate action taken by a DoD Component or military commander, under the authority of this part and any supplemental guidance prescribed by the Head of a DoD Component, to assist civil authorities or the public to save lives, prevent human suffering, or mitigate great property damage under imminently serious conditions occurring where there has not been any declaration of major disaster or emergency by the President or attack.

Imminently serious conditions. Emergency conditions in which, in the judgment of the military commander or responsible DoD official, immediate and possibly serious danger threatens the public and prompt action is needed to save lives, prevent human suffering, or mitigate great property damage. Under these conditions, timely prior approval from higher headquarters may not be possible before action is necessary for effective response.

Military resources. Military and civilian personnel, facilities, equipment, and supplies under the control of a DoD Component.

Military Support to Civil Authorities (MSCA). Those activities and measures taken by the DoD Components to foster mutual assistance and support between the Department of Defense and any civil government agency in planning or preparedness for, or in the application of resources for response to, the consequences of civil emergencies or attacks, including national security emergencies.

National Disaster Medical System (NDMS). An inter-departmental national mutual aid system developed by Federal departments and agencies to provide for the medical needs of victims of major disasters, and to provide backup support for medical systems of the Departments of Defense and Veterans Affairs in caring for casualties from military conflicts. The Department of Health and Human Services serves as the lead Federal agency for administering NDMS, and would coordinate NDMS operations in response to civil emergencies. The Department of Defense could activate and coordinate NDMS operations in support of military contingencies.

National security emergency. Any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States (E.O. 12656).

Planning agent. A military or civilian official of any DoD Component, who has been designated by the head of that Component to exercise delegated authority for MSCA planning for the entire Component (i.e., "principal planning agent") or for certain subordinate elements or a specified geographic area (e.g., "regional planning agents"). Authority and responsibilities of each planning agent will be defined by the Component, and may include MSCA response as well as planning at the election of any Component. The actual authority of planning agents will be communicated to others, as determined by the DoD Component, or when requested by the DoD Executive Agent.

Regional Military Emergency Coordinator (RMEC). An individual, designated on behalf of the Secretary of Defense and the DoD Executive Agent, to perform coordination, information exchange, and liaison functions on behalf of the Department of Defense with any Federal emergency management structure established at the Region level. Alternate RMECs are designated by other DoD Components, as required, in accordance with this part; and the RMECs and alternates collectively are referred to as "RMEC Teams."

Residual Capability Assessment (RECA). An assessment of the effects of a nuclear or conventional attack on U.S. resources, or of a major peacetime disaster that results in the declaration of a national security emergency. Such an assessment is made (through all appropriate means) to determine the remaining capabilities of the United States with emphasis on military preparedness.

Resource claimancy. The procedure, employed during any period of attack or national security emergency, whereby authorized Federal agencies determine definitive requirements and justify the allocation of civil government and civil resources needed to support programs under their cognizance. It does not imply procurement activity, nor does it involve the Government as an intermediary in the normal mechanisms of trade other than in expediting essential activities and ensuring equitable distribution of civil resources. Resource claimancy occurs at both the national and regional levels.

State Area Commands (STARCs). Specific headquarters units of the Army National Guard for each State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

§ 185.4 Policy.

(a) *National policy.* (1) Planning and preparedness by the Federal Government for civil emergencies and attacks are important due to the severity of the consequences of emergencies for

the nation and the population, and to the sophistication of means of attack on the United States and its territories.

(2) Under the Stafford Act, as amended, it is the policy of the Federal Government to provide an orderly and continuing means of supplemental assistance to State and local governments in their responsibilities to alleviate the suffering and damage that result from major disasters or emergencies. Upon declaring a major disaster or emergency under the Stafford Act, the President may direct any agency of the Federal Government to undertake missions and tasks (on either a reimbursable or non-reimbursable basis) to provide assistance to State and local agencies. The President appoints a Federal Coordinating Officer (FCO) to operate in the affected area, and delegates authority to the FCO. The President has delegated to the Director of FEMA the authority to appoint FCOs; and FEMA officials frequently serve as FCOs.

(3) In accordance with the Federal Civil Defense Act of 1950, as amended, the national civil defense policy is to have a civil defense program to develop capabilities common to all catastrophic emergencies and those unique to attack emergencies, which will support all-hazard emergency management at State and local levels, in order to protect the population and vital infrastructure. Under the national civil defense policy, the Department of Defense will support civil authorities in civil defense, to include facilitating the use of the National Guard in each State for response in both peacetime disasters and national security emergencies.

(4) Under E.O. 12656, it is the policy of the Federal Government to have sufficient capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency.

(b) *Scope.* This part governs all planning and response by DoD Components for civil defense or other assistance to civil authorities, with the exception of military support to law enforcement operations under DoD Directive 3025.12 and contingency war plans.

(c) *Delegations of authority.* The Secretary of Defense shall be assisted in executing his responsibility for MSCA by the following:

(1) The Secretary of the Army shall be the DoD Executive Agent and shall act for the Secretary of Defense in accordance with this part and any supplemental direction or guidance received from the Secretary of Defense. In that capacity, the DoD Executive Agent will develop planning guidance, plans, and procedures for MSCA in accordance with this part. The DoD Executive Agent has the authority of the Secretary of Defense to task the DoD Components to plan for and to commit DoD resources, in response to requests from civil authorities under MSCA. The Secretary of the Army shall coordinate with the Chairman of the Joint Chiefs of Staff any commitment of military forces assigned to the Unified and Specified Commands.

(2) The Chairman of the Joint Chiefs of Staff shall communicate to the Commanders of the Unified and Specified Commands appropriate guidance issued by the Secretary of the Army for their compliance with this part, and also shall assist the DoD Executive Agent in developing MSCA planning guidance for all conditions of war or attacks on the United States or its territories.

(3) The Commander in Chief, Forces Command (CINCFOR); the Commander in Chief, U.S. Atlantic Command (USCINCLANT); and the Commander in Chief, U.S. Pacific Command (USCINCPAC), shall serve as "DoD Planning Agents" for MSCA. Pursuant to guidance issued by the DoD Executive Agent, after coordination with the Chairman of the Joint Chiefs of Staff, the DoD Planning Agents shall conduct MSCA planning, and shall lead MSCA planning activities of all DoD Components within the following geographic areas:

(i) CINCFOR (48 contiguous States and the District of Columbia).

(ii) USCINCLANT (Puerto Rico and the U.S. Virgin Islands).

(iii) USCINCPAC (Alaska, Hawaii, and U.S. possessions and territories in the Pacific area).

(4) The Commanders of the Unified and Specified Commands shall provide MSCA response, as directed by the DoD Executive Agent.

(5) The Secretary of Defense reserves the authority to modify or terminate the executive agency established by this part if operational needs so require in a particular situation.

(d) *MSCA policy.*

(1) MSCA shall include (but not be limited to) support similar to that described for immediate response (paragraph (e) of this section), in either civil emergencies or attacks, during any period of peace, war, or transition to war. It shall include response to civil defense agencies, but shall not include military assistance for civil law enforcement operations.

(i) DoD Directive 3025.12 governs use of military resources in the event of civil disturbances, which may include providing physical security for DoD Key Assets, as defined in DoD Directive 5160.54.[7]

(ii) Material, logistic, communications, and other assistance to law enforcement (especially during enforcement operations) is provided under DoD Directive 5525.5[8]

(2) The DoD Components shall respond to requirements of the DoD Executive Agent and DoD Planning Agents for MSCA, as authorized by this part.

(3) To ensure sound management of DoD resources, MSCA planning will stress centralized direction of peacetime planning with civil authorities, with decentralized planning by DoD Components with civil agencies, where appropriate, and decentralized execution of approved plans in time of emergency.

(4) Subject to priorities established by the President or the Secretary of Defense, all DoD resources are potentially available for MSCA. MSCA planning and execution will encourage and adhere to the following premises:

(i) That civil resources are applied first in meeting requirements of civil authorities.

(ii) That DoD resources are provided only when response or recovery requirements are beyond the capabilities of civil authorities (as determined by FEMA or another lead Federal agency for emergency response).

(iii) That specialized DoD capabilities requested for MSCA (e.g., airlift and airborne reconnaissance) are used efficiently.

(iv) Generally, military operations other than MSCA will have priority over MSCA, unless otherwise directed by the Secretary of Defense.

(5) MSCA shall provide a mechanism to facilitate continuous and cooperative civil and military planning and preparedness to mobilize all appropriate resources and capabilities of the civil sector and the Department of Defense, whenever required for any form of national security emergency.

(6) DoD planning shall recognize that:

(i) Army and Air National Guard forces, acting under State orders (i.e., not in Federal service), have primary responsibility for providing military assistance to State and local government agencies in civil emergencies.

(ii) The Army National Guard State Area Command (STARC), when ordered to Federal Active Duty, will be the DoD focal point for delivery of MSCA at State and local levels in time of war.

(iii) Plans and preparedness measures of MSCA must foster close and

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[7] See footnote 4 to § 185.1(f).

[8] See footnote 4 to § 185.1(f).

continuous coordination for efficient employment of DoD resources of the National Guard (whether employed under State or Federal authority), as well as resources of the DoD Components, in time of peace, war, or transition to war.

(iv) In the event of an attack on the United States, its territories, or possessions, the scope of MSCA in each geographical area will depend upon the commitment of military resources to military operations, the extent of damage sustained by the civilian communities, and the status of Active and Reserve Component forces.

(7) DoD Components shall augment staffs responsible for MSCA, as appropriate, with personnel from Reserve components of all Military Services who are specifically trained for civil-military planning and emergency liaison duties. (See enclosure 3 in DoD Directive 1215.6.)[9] The Military Services also shall ensure that all Active or Reserve component military personnel assigned or attached to FEMA are appropriately trained and employed to enhance DoD capabilities for MSCA in time of war or attack on the United States or its territories.

(8) The DoD Components ordinarily shall provide DoD resources in response to civil emergencies on a cost reimbursable basis. However, see paragraph (e)(2) of this section for circumstances in which an inability or unwillingness of a requester to commit to reimbursement will not preclude action by DoD components.

(i) The DoD Components shall comply with legal and accounting requirements for the loan, grant, or consumption of DoD resources for MSCA, as necessary, to ensure reimbursement of costs to the DoD Components under the Stafford Act, as amended; the Defense Emergency Response Fund established by Public Law 101–165 (1989); or other applicable authority.

(ii) The DoD Components shall not procure or maintain any supplies, material, or equipment exclusively for providing MSCA in civil emergencies, unless otherwise directed by the Secretary of Defense.

(iii) Planning for MSCA during any time of attack on the United States shall assume that financial requirements will be met through appropriate legal processes.

(9) Military forces employed in MSCA activities shall remain under military command and control under the authority of the DoD Executive Agent at all times.

(10) The DoD Components shall not perform any function of civil government unless absolutely necessary on a temporary basis under conditions of Immediate Response. Any commander who is directed, or undertakes, to perform such functions shall facilitate the reestablishment of civil responsibility at the earliest time possible.

(e) *Immediate Response.* (1) Imminently serious conditions resulting from any civil emergency or attack may require immediate action by military commanders, or by responsible officials of other DoD Agencies, to save lives, prevent human suffering, or mitigate great property damage. When such conditions exist and time does not permit prior approval from higher headquarters, local military commanders and responsible officials of other DoD Components are authorized by this part, subject to any supplemental direction that may be provided by their DoD component, to take necessary action to respond to requests of civil authorities. All such necessary action is referred to in this part as "Immediate Response."

(2) While Immediate Response should be provided to civil agencies on a cost-reimbursable basis if possible, it should not be delayed or denied because of the inability or unwillingness of the requester to make a commitment to reimburse the Department of Defense.

(3) Any commander or official acting under the Immediate Response authority of this Directive shall advise the DoD Executive Agent through command channels, by the most expeditious means available, and shall seek approval or additional authorizations as needed.

(4) Immediate Response may include DoD assistance to civil agencies in meeting the following types of need:

(i) Rescue, evacuation, and emergency medical treatment of casualties, maintenance or restoration of emergency medical capabilities, and safeguarding the public health.

(ii) Emergency restoration of essential public services (including fire-fighting, water, communications, transportation, power, and fuel).

(iii) Emergency clearance of debris, rubble, and explosive ordnance from public facilities and other areas to permit rescue or movement of people and restoration of essential services.

(iv) Recovery, identification, registration, and disposal of the dead.

(v) Monitoring and decontaminating radiological, chemical, and biological effects; controlling contaminated areas; and reporting through national warning and hazard control systems.

(vi) Roadway movement control and planning.

(vii) Safeguarding, collecting, and distributing food, essential supplies, and material on the basis of critical priorities.

(viii) Damage assessment.

(ix) Interim emergency communications.

(x) Facilitating the reestablishment of civil government functions.

(f) *Military cooperation with civil agencies.* (1) Under E.O. 12148 (44 FR 43239, 3 CFR 1979 Comp., p. 412) and E.O. 12656, FEMA is responsible for coordinating Federal plans and programs for response to civil emergencies at the national and regional levels, and for Federal assistance to the States in civil emergencies. Other Federal departments and agencies have specific responsibilities for emergency planning and response under E.O. 12656, and under statutory authorities not listed in this part. The DoD Executive Agent shall ensure:

(i) Coordination of MSCA plans and procedures with FEMA, and with other civil agencies as appropriate, at the national and Federal Region level.

(ii) Facilitation of direct planning for MSCA by DoD facilities and installations with their local communities, and with their respective STARCs, as appropriate.

(2) The DoD Executive Agent also shall provide appropriate guidance to facilitate MSCA planning and response with the American Red Cross and other civilian disaster and emergency assistance organizations where authorized by law.

(g) *Response under other authorities.* DoD response to emergencies under authorities not cited in this Directive also may be directed, coordinated, or supplemented by the DoD Executive Agent, as circumstances require. For example:

(1) The U.S. Coast Guard (USCG) or the U.S. Environmental Protection Agency (EPA) will coordinate Federal response to oil or hazardous material spills, other than those occurring within DoD jurisdictions. The DoD Executive Agent will provide MSCA to the USCG or the EPA; but responsibilities of DoD Components in areas under DoD jurisdiction are covered by DoD Directive 5030.41[10].

(2) Emergencies or other incidents involving radiological materials shall be handled in accordance with DoD Directive 5100.52[11].

(3) The Secretary of the Army shall ensure the implementation of DoD

[9] See footnote 4 to § 185.1(f).

[10] See footnote 4 to § 185.1(f).

[11] See footnote 4 to § 185.1(f).

responsibilities for emergency water requirements, as specified in E.O. 12656, and response to flooding, as provided in Public Law 84–99 (1941), as amended.

(4) Forest fire emergencies are responsibilities of the U.S. Department of Agriculture or Interior. The Boise Interagency Fire Center (BIFC) may request DoD assistance; and specific details regarding DoD support are covered by agreements between the Department of Defense and the BIFC that are administered by the DoD Executive Agent.

(5) The DoD Executive Agent is delegated the authority to direct DoD Components in planning for and responding to any civil emergency that may arise out of any mass immigration by aliens into the land territory of the United States, its territories and possessions, consistent with applicable law and this part. The DoD Executive Agent should ensure appropriate coordination with Federal law enforcement authorities in exercising this authority.

(6) Use of DoD transportation resources in response to a non-declared civil emergency shall be directed by the DoD Executive Agent under this part. (See also DoD Directive 4500.9 [12]

(h) *Non-declared emergencies.* The DoD Executive Agent may direct DoD Components to respond to any emergency, based on authority that is provided by this part or obtained from the Secretary or Deputy Secretary of Defense. If an emergency of any kind or size requires a response on behalf of the Department of Defense, where there has not been any declaration of major disaster or emergency by the President, or if reimbursement of funds to the Department of Defense is otherwise not certain, the DoD Executive Agent shall ascertain the authority necessary to commit DoD resources for response to requests from civil authorities.

(1) Authorizations by the DoD Executive Agent under this paragraph shall include (but not be limited to) commitment of funds from the Defense Emergency Response Fund in anticipation of reimbursements to that fund.

(2) The DoD Executive Agent shall obtain authorization from the Secretary of Defense or Deputy Secretary of Defense to provide support in those cases in which DoD response is not clearly required by Federal law or by DoD plans approved by the DoD Executive Agent.

(i) *Emergency priorities.* When guidance cannot be obtained from higher headquarters on a timely basis, due to attack on the United States or other emergency circumstances, the DoD Components should apply DoD resources to MSCA in the following order of priority:

(1) To save human life and mitigate human suffering, and to protect essential U.S. Government capabilities, including:

(i) Continuity of the U.S. Government.

(ii) Protection of U.S. Government officials.

(iii) Prevention of loss or destruction to Federal property.

(iv) Restoration of essential Federal functions.

(2) To preserve or restore services of State and local government.

§ 185.5 Responsibilities.

(a) The *Under Secretary of Defense For Policy* shall:

(1) Exercise policy oversight of MSCA for the Secretary of Defense, and ensure compatibility of MSCA with National Security Emergency Preparedness, in accordance with DoD Directive 3020.36 [13] and E.O. 12656.

(2) Coordinate DoD policy governing plans and operations with FEMA; and assist the DoD Executive Agent, the Chairman of the Joint Chiefs of Staff, and others, as appropriate, in their coordination with FEMA.

(b) The *Assistant Secretary of Defense For Health Affairs* shall coordinate policy for emergency medical support to civil authorities in consonance with this part, to include participation by the Department of Defense in the National Disaster Medical System (NDMS).

(c) The *Assistant Secretary of Defense (Reserve Affairs)* shall advise the DoD Executive Agent, the Chairman of the Joint Chiefs of Staff, the USD(P), and the Secretaries of the Military Departments, as required, on Reserve component matters impacting on MSCA.

(d) The *Comptroller of the Department of Defense* shall:

(1) Facilitate accounting procedures that will enable the Department of Defense to respond on a timely basis to all emergency requirements for MSCA; and

(2) In conjunction with the DoD Executive Agent, provide for accounting and other procedures necessary to manage expenditures for MSCA from the Defense Emergency Response Fund.

(e) The *Chairman of the Joint Chiefs of Staff* shall:

(1) Advise the Secretary of Defense and the DoD Executive Agent on policies, responsibilities, and programs bearing on MSCA.

(2) In coordination with the DoD Executive Agent, facilitate communications by the DoD Executive Agent with commanders, as appropriate.

(3) Ensure the compatibility of MSCA plans with other military plans.

(4) Facilitate CINCFOR's development of an MSCA data base and emergency reporting system, as described in paragraph (j) of this section.

(5) Facilitate coordinated evaluation of MSCA plans and capabilities by the Commanders of the Unified and Specified Commands through exercises or other means, as appropriate.

(f) The *Secretaries of the Military Departments* shall:

(1) Provide for participation by the Military Services in MSCA planning, in accordance with this part and with guidance of the DoD Executive Agent; and ensure readiness of Active and Reserve components to execute plans for MSCA.

(2) Ensure the designation of a principal planning agent and regional planning agents of MSCA for each Military Service, and advise the DoD Executive Agent and the Chairman of the Joint Chiefs of Staff of such agents.

(3) Ensure effective and efficient coordination of MSCA planning by Service installations with Federal Regions, STARCs, and State and local civil authorities, through the DoD Planning Agents, as directed by the DoD Executive Agent.

(4) Furnish available resources for MSCA when directed by the DoD Executive Agent.

(5) Identify to the DoD Executive Agent the resources of their respective Military Services that are potentially available for MSCA within the parameters of the DoD Resources Data Base (DODRDB) for MSCA, which is described in paragraph (n) of this section. Facilitate use of that data base to support decentralized management of MSCA in time of emergency, as appropriate.

(6) Prepare to support civil requests for damage and residual capability assessment following civil emergencies or attacks, to include providing aerial reconnaissance as appropriate.

(7) Provide Military Department representatives to serve on RMEC teams, as requested by the DoD Executive Agent.

(8) Based on validated military planning and operational requirements, assign individual Reservists from Military Services to FEMA and other appropriate civil government offices and headquarters to provide liaison for planning and emergency operations for MSCA. (See enclosure 3 in DoD Directive 1215.6.)

[12] See footnote 4 to § 185.1(f).

[13] See footnote 4 to § 185.1(f).

(9) Provide available Military Service personnel for MSCA training, including courses conducted by CINCFOR and FEMA.

(10) Provide for application of critical emergency capabilities of the Services (such as disposal of explosive ordnance and nuclear devices) for MSCA, as required.

(g) In addition to the responsibilities assigned under paragraph (f) of this section, the *Secretary of the Army*, as DoD Executive Agent, shall:

(1) Coordinate with the Chairman of the Joint Chiefs of Staff, in advance, for the employment of forces assigned to the Unified and Specified Commands in MSCA missions.

(2) Establish a single headquarters element (to be denominated the "Directorate of Military Support (DOMS)") under the Secretary of the Army, through which the Secretary of the Army issues orders necessary to perform the duties of the DoD Executive Agent under this part. The Secretary of the Army shall ensure that the staff element includes specially qualified and trained officers of all Military Services, including those at senior levels within the element.

(3) Manage expenditures for MSCA from the Defense Emergency Response Fund. (See § 185.4(d)(8).)

(4) Direct and coordinate the development of both generic and incident-specific plans for MSCA through the DoD Planning Agents designated in § 185.4(c)(3), and through the DoD Components, as appropriate.

(5) Establish appropriate guidance, through the National Guard Bureau, for the Adjutants General of the 50 States, District of Columbia, Guam, Puerto Rico, and the Virgin Islands to ensure compliance by the Army National Guard with this part. Such guidance shall provide for the following, as appropriate:

(i) Resourcing the STARCs for MSCA planning and response tasks.

(ii) STARC interfaces with commands and installations of all Services, including the DoD Planning Agents, and with State civil agencies.

(iii) STARC acceptance, support, and utilization of liaison and augmentation from all Military Services, as appropriate.

(6) Provide for the manning and operation of RMEC teams to coordinate the interface between the Defense Components and all Federal regional emergency management structures established by FEMA that may affect MSCA.

(7) Provide for effective utilization in MSCA planning of the U.S. Army Corps of Engineers, the Naval Construction Force, and the U.S. Air Force Civil Engineers, to include all civil works authorities and other unique civil emergency capabilities, as permitted by law.

(8) Delegate as appropriate authority under this part to the DoD Planning Agents, to Defense Coordinating Officers (DCOs) appointed for response to civil emergencies under the Stafford Act, as amended, or to other DoD officials to accomplish any requirement for MSCA planning or operations under this part.

(9) Provide guidance to CINCFOR for content, dissemination, and use of the DODRDB for MSCA, which is described in paragraph (j) of this section and ensure opportunity for input by the Chairman of the Joint Chiefs of Staff in the continuing development of that data base.

(10) Maintain national-level liaison with FEMA for MSCA.

(11) Provide Army Reserve support to FEMA, on a reimbursable basis, for emergency communications, security operations, and associated management support, at the Federal Regions, as determined by agreement between FEMA and the DoD Executive Agent; and ensure the availability of such support during any time of war or national mobilization.

(12) Provide full-time Army personnel, as required, to manage the Military Support Liaison Office established by agreement between the Secretary of Defense and the Director of FEMA. Utilize that office to facilitate requirements and communications of the DoD Executive Agent under this part.

(13) Develop training courses for MSCA, including specialized training for Reserve component emergency preparedness liaison officers of all Military Services who will work with civilian communities and agencies as authorized for MSCA missions.

(14) Provide authorizations to DoD Components to perform emergency work under Section 403(c) of the Stafford Act, as amended. That statute provides that, when authorized by the President at the request of a State Governor, under certain conditions, the Department of Defense may perform on public or private lands emergency work that is essential for the preservation of life or property. Emergency work by the Department of Defense under that provision may be carried out only for a period not to exceed 10 days, and is only 75 percent funded by Federal funds.

(h) In addition to the responsibilities assigned under paragraph (f) of this section, the Secretary of the Navy shall:

(1) Maintain liaison and coordinate planning with the Department of Transportation for participation by USCG forces in MSCA.

(2) Furnish technical advice and support for MSCA planning and implementation in areas that are uniquely within the competence of the Navy, Marine Corps, or USCG (e.g., nuclear material disposal for coastal and maritime areas, and emergency protection or restoration of seaport capabilities).

(i) In addition to the responsibilities assigned under paragraph (f) of this section, the Secretary of the Air Force shall:

(1) Establish appropriate guidance, through the National Guard Bureau, for the Adjutants General of the 50 States, District of Columbia, Guam, Puerto Rico, and the Virgin Islands to ensure compliance by the Air National Guard with this part.

(2) Facilitate planning by the Civil Air Patrol for participation in MSCA.

(3) Furnish technical advice and support for MSCA planning and implementation in areas that are uniquely within the competence of the Air Force and its wartime augmentation elements (e.g., coordination with the Federal Aviation Administration, the National Aeronautics and Space Administration, and the National Oceanic and Atmospheric Administration).

(4) Facilitate the conduct and coordination of aerial reconnaissance missions to perform damage assessment in support of MSCA.

(j) In addition to serving as a DoD Planning Agent under paragraph (k) of this section, the Commander in Chief, Forces Command (CINCFOR), subject to the direction of the DoD Executive Agent, shall:

(1) Maintain liaison with FEMA to facilitate cooperative civil and military planning and training for MSCA.

(2) Lead DoD liaison with FEMA and other Federal Agencies at the Federal Regions, including utilization of the RMEC Teams.

(3) Continue to develop, maintain, and disseminate the DODRDB.

(i) The DODRDB shall support MSCA planning for civil emergencies or attacks, as well as post-disaster and post-attack damage and residual capability assessment by field elements of the DoD Components. It shall include essential information on resources routinely held by the DoD Components and directly applicable to lifesaving, survival, and immediate recovery aspects of MSCA.

(ii) Forces to be included in the DODRDB are those that are based in the

United States and its territories and most capable of supporting civil emergency functions. Those forces include (but are not limited to) construction, airlift, medical, signal, transportation, and military police elements, and training base forces of all Services. The DODRDB will not include strategic forces or any other forces identified for exclusion by the Chairman of the Joint Chiefs of Staff, unless otherwise directed by the Secretary of Defense.

(iii) The DODRDB shall serve as the basis for emergency reports under continuity of operations, damage assessment, and residual capabilities, and shall include (but not be limited to) reports through the STARCs required by subsection F.2. of DoD Directive 3020.26.[14]

(4) Plan and conduct civil-military training courses and exercises in conjunction with FEMA.

(k) The Commander in Chief, Forces Command; the Commander in Chief, U.S. Atlantic Command; and the Commander in Chief, U.S. Pacific Command, shall:

(1) In accordance with guidance from the DoD Executive Agent communicated through the Chairman of the Joint Chiefs of Staff—

(i) Serve as DoD Planning Agents for MSCA for the areas specified in § 185.4(b)(3); and develop MSCA plans and preparedness measures for their MSCA areas of responsibility.

(ii) Ensure cooperative planning for MSCA operations between DoD Components, FEMA, and other Federal or State civil agencies, as required.

(iii) Utilize RMEC teams to assist in plan development.

(iv) Coordinate with the STARCs through channels established by the Secretary of the Army; and utilize liaison officers provided for in DoD Directive 1215.6 and others, as appropriate, to facilitate coordination of emergency planning.

(v) Plan to perform any designated function of the DoD Executive Agent under this part, if ordered by the Secretary of Defense in time of war or attack on the United States.

(vi) Evaluate MSCA plans, preparedness measures, and training in joint civil military exercises.

(2) Furnish MSCA as directed by the DoD Executive Agent. Employ RMEC Teams and liaison officers, as appropriate, to coordinate emergency response operations with civil agencies, the National Guard, the Military Departments and the CINCs.

(3) Furnish assistance to civil authorities in non-declared emergency situations when directed by the DoD Executive Agent.

(l) The Directors of the Defense Agencies shall:

(1) Designate a principal planning agent and regional planning agents for MSCA, and advise the DoD Executive Agent of such designated agents.

(2) Ensure effective and efficient coordination of planning by subordinate elements with Federal Regions, STARCs, and State and local civil authorities, through the DoD Planning Agents, as directed by the DoD Executive Agent.

(3) Furnish resources for MSCA when directed by the DoD Executive Agent.

(4) Make DoD resources available for technical support to the other DoD Components for MSCA, when required.

(5) Respond to requests by the DoD Executive Agent to identify resources for the DODRDB.

(6) Provide representatives to serve on RMEC teams, as requested by the DoD Executive Agent.

§ 185.6 Information requirements.

The reporting requirements in § 185.5 are exempt from licensing in accordance with paragraph E.4.b. of DoD 8910.1–M.[15]

Dated: October 5, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–24876 Filed 10–8–93; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–4783–7]

Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for Arkansas

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs, and to incorporate those provisions of the State statutes and regulations that EPA will enforce under RCRA Section 3008 by reference into 40 CFR part 272.

EFFECTIVE DATE: This document will be effective on December 13, 1993 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on this action must be received by the close of business on November 12, 1993. The incorporation by reference of certain Arkansas statutes and regulations was approved by the Director of the Federal Register as of December 13, 1993 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments should be addressed to Dick Thomas, Region 6 Authorization Coordinator (6H–HS), Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, phone 214/655–8528.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Region 6 Authorization Coordinator (6H–HS), Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, phone 214/655–8528.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of RCRA, 42 U.S.C. 6926 *et seq.*, allows the U.S. Environmental Protection Agency (EPA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. The purpose of today's **Federal Register** notice is to incorporate EPA's approval of Arkansas' base hazardous waste management program and its revisions into 40 CFR part 272.

On January 11, 1985, EPA published a **Federal Register** document announcing its decision to grant final authorization for the RCRA base program to the State of Arkansas (see 50 FR 1513). Effective August 23, 1985; May 29, 1990 (55 FR 11192); November 18, 1991 (56 FR 47153 and 56 FR 57593); December 4, 1992 (57 FR 45721 and 57 FR 45722), EPA granted Arkansas additional authorization.

Arkansas has adopted but is not authorized for the September 1, 1988 (53 FR 33938) amendments to 40 CFR parts 264 and 265 addressing liability requirements. Thus, the portions of the Arkansas Hazardous Waste Management Code, Chapter 2, Sections 3a(5) and 3a(6) incorporating the September 1, 1988 amendments are not part of the

[14] See footnote 4 to § 185.1(f).

[15] See footnote 4 to § 185.1(f).

State's authorized program and are not part of the incorporation by reference addressed by today's **Federal Register** document.

Arkansas is authorized to implement certain HSWA requirements in lieu of EPA. EPA has explicitly indicated its intent to allow such action in **Federal Register** documents granting Arkansas authorization effective November 18, 1991 (56 FR 47153; September 18, 1991) and December 4, 1992 (57 FR 45721 and 57 FR 45722; October 5, 1992).

EPA provides notice of its approval of State programs in 40 CFR part 272, and incorporates by reference therein the State statutes and regulations that it will enforce under section 3008 of RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Arkansas. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98–618. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized Arkansas program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in Arkansas, the status of Federally approved requirements of the Arkansas program will be readily discernible.

The Agency will only incorporate by reference for enforcement purposes those provisions of the Arkansas hazardous waste management program for which authorization approval has been granted by EPA. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogs.

Arkansas Authorized Hazardous Waste Program

To incorporate by reference the Arkansas authorized hazardous waste program, EPA intends to add subpart E to 40 CFR part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.201(a) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at 40 CFR 272.201(d), (e) and (f), respectively.

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Arkansas enforcement authorities. Section 272.201(b) of 40 CFR lists those authorized Arkansas authorities that are part of the authorized program but are not incorporated by reference.

Some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C (see 40 CFR 271.1(i)). As a result, State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.201(c) of 40 CFR lists for reference and clarity the Arkansas statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

HSWA Provisions

As noted above, the Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are immediately effective in Arkansas and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (see 50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to 40 CFR part 271. EPA expects that States will modify their programs substantially and repeatedly. Instead of amending 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the section of 40 CFR part 272 applicable to the State. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

As indicated earlier, Arkansas is authorized to implement certain HSWA requirements in lieu of EPA. EPA has explicitly indicated its intent to allow such action in **Federal Register** documents granting Arkansas authorization effective November 18, 1991 (56 FR 47153; September 18, 1991) and December 4, 1992 (57 FR 45721 and 57 FR 45722; October 5, 1992).

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to incorporate by reference the decisions already made to authorize Arkansas' program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden

imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: September 23, 1993.

Joe D. Winkle,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Subpart E—[Amended]

2. Subpart E is amended by adding § 272.201 to read as follows:

§ 272.201 Arkansas State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Arkansas has final authorization for the following elements as submitted to EPA in Arkansas' base program application for final authorization which was approved by EPA effective on January 25, 1985. Subsequent program revision applications were approved effective on August 23, 1985, May 29, 1990, November 18, 1991, and December 4, 1992. Arkansas is authorized to implement certain HSWA requirements in lieu of EPA. EPA has explicitly indicated its intent to allow such action effective on November 18, 1991 and December 4, 1992.

(b) *State Statutes and Regulations.*

(1) The Arkansas statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(i) EPA Approved Arkansas Statutory Requirements Applicable to the Hazardous Waste Management Program, September, 1993.

(ii) EPA Approved Arkansas Regulatory Requirements Applicable to the Hazardous Waste Management Program, September, 1993.

(2) The following statutes and regulations concerning State enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Arkansas Hazardous Waste Management Act of 1979, Act 406 of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1991 Replacement, Sections 8–7–204 through 8–7–214, 8–7–217, 8–7–218, 8–7–220, 8–7–222, and 8–7–225(b) through 8–7–225(d).

(ii) Arkansas Resource Reclamation Act of 1979, Act 1098 of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1991 Replacement, Sections 8–7–302(3), 8–7–303, 8–7–308(1), and 8–7–308(4).

(iii) Arkansas Department of Pollution Control and Ecology (ADPC&E) Regulation No. 23, Hazardous Waste Management, as amended December 6, 1991, effective January 27, 1992, chapter two, sections 3a(11), 3b, 3c, 4, 6 (except 6b and 6c), 7, 8, 12b(7), 12c introductory paragraph, 12(c)(1)–12c(9), 12d, 12e, 14a, 17; chapter three, sections 19 and 20; chapter five, sections 26 and 27.

(iv) Arkansas Department of Pollution Control and Ecology, Regulation No. 7, Civil Penalties, May 25, 1984.

(v) Arkansas Department of Pollution Control and Ecology, Regulation No. 8, Administrative Procedures, July 6, 1984.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Arkansas Hazardous Waste Management Act, as amended, Act 406 of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1991 Replacement, Section 8–7–226.

(ii) Arkansas Department of Pollution Control and Ecology Regulation No. 23, Hazardous Waste Management, as amended December 6, 1991, effective January 27, 1992, chapter two, section 2a(5) (only the second sentence), section 2b(11), section 3a(10), section 11, section 16a, and portions of sections 16c and 16d that refer to PCBs; and chapter four, section 23.

(4) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of Arkansas Department of Pollution Control and Ecology, signed by the EPA Regional Administrator on September 6, 1991, is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(5) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of Arkansas on July 9, 1984 and revisions, supplements and addenda to that Statement dated September 24, 1987, February 24, 1989, December 11, 1990, and May 7, 1992, are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Program Description.* The Program Description dated and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272, is amended by adding in alphabetical order, "Arkansas" and its listing to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Arkansas

The statutory provisions include:

Arkansas Hazardous Waste Management Act, as amended, Act 406 of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 1991, Sections 8–7–202, 8–7–203, 8–7–215, 8–7–216, 8–7–219, 8–7–221, 8–7–223, 8–7–224, and 8–7–225(a), published in 1991 by the Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, Virginia 22906–7587.

The regulatory provisions include:

Arkansas Department of Pollution Control and Ecology Regulation No. 23, Hazardous Waste Management, as amended December 6, 1991, effective January 27, 1992, chapter one; chapter two, sections 2a (excluding all of 2a(5) except the first sentence), 2b (except 2b(11)), 2c, 3a (except 3a(10) and 3a(11)), 5, 6 introductory paragraph, 6b, 6c, 9, 10, 12 introductory paragraph, 12a, 12b (except 12b(7)), 12c(10), 12c(11), 13, 14 introductory paragraph, 14b, 15, 16 introductory paragraph, 16b, 16c (except the phrase "or the letters 'PCB' for PCB shipments" in 16c(1)(e)), 16d(1) (except the phrase "(including PCBs and PCB contaminated wastes)" in the first sentence), 16d(1)(a)–16d(1)(d), 16d(1)(e) (except the phrase "or 'PCBs'" in the first sentence), 16d(1)(f)–16e. Copies of the Arkansas regulations can be obtained from the Arkansas Register, Secretary of State, State Capitol Building, Little Rock, Arkansas 72201.

* * * * *

[FR Doc. 93–24962 Filed 10–8–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 272

[FRL–4786–4]

Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for New Mexico

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses title 40, part 272 of Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs, and to incorporate by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA section 3008. EPA intends to incorporate by reference the New Mexico authorized State program in 40 CFR part 272.

EFFECTIVE DATES: This document will be effective December 13, 1993, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on this action must be received by the close of business November 12, 1993. The incorporation by reference of certain New Mexico statutes and regulations was approved by the Director of the Federal Register as of December 13, 1993, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments should be sent to Dick Thomas, Region 6 Authorization Coordinator (6H–HS), Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, suite 1200, Dallas, TX 75202, phone 214–655–8528.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Region 6 Authorization Coordinator (6H–HS), Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, phone 214–655–8528.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of RCRA, 42 U.S.C. 6926 *et seq.*, allows the EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. The purpose of today's **Federal Register** document is to incorporate by reference EPA's approval of New Mexico's base hazardous waste management program and its revisions to that program.

On January 11, 1985, EPA published a **Federal Register** (FR) document announcing its decision to grant final authorization for the RCRA base program to the State of New Mexico (see 50 FR 1515). Effective April 10, 1990 (see 55 FR 4604); July 25, 1990 (55 FR 28397); and December 4, 1992 (57 FR 45717), EPA granted New Mexico additional authorization.

New Mexico has adopted but is not authorized for the Federal rules published in the **Federal Register** from January 28, 1983 through March 20, 1984 (see 53 FR 33938; 48 FR 3977; 48 FR 39611; 48 FR 52718; 49 FR 5308; and 49 FR 10490) and on September 1, 1988 (see 53 FR 33938). Therefore, these rules included in the State incorporation by reference of Federal code at Parts I, II, III, V, VI, and IX are not Federally enforceable.

Except for the HSWA provisions concerning research, development and demonstration permits (50 FR 28702; July 15, 1985), New Mexico is not authorized to implement any HSWA requirements in lieu of EPA. However in adopting Federal requirements by reference, the State included in its adoption certain of the HSWA-based regulations that were promulgated by EPA prior to July 1, 1990. Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State's method of adopting Federal law by reference has the effect of including unauthorized requirements, EPA will provide this clarification by: (1) Incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in a distinct section of this subpart any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State received specific HSWA authorization from EPA.

EPA provides both notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that EPA will enforce under section 3008 of RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in New Mexico. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98–618. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized New Mexico program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in New Mexico, the status of Federally approved requirements of the New Mexico program will be readily discernible.

The Agency will only enforce those provisions of the New Mexico hazardous waste management program for which authorization approval has been granted by EPA. This document incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogs.

New Mexico Authorized Hazardous Waste Program

To incorporate by reference the New Mexico authorized hazardous waste program, EPA intends to add subpart GG to 40 CFR part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.1601(a) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at 40 CFR 272.1601(e), (f) and (g), respectively.

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate

by reference for purposes of enforcement such particular, authorized New Mexico enforcement authorities. Section 272.1601(b) of 40 CFR lists those authorized New Mexico authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C (see 40 CFR 271.1(i)). As a result, State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.1601(c) of 40 CFR lists for reference and clarity the New Mexico statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions. Similarly, the State's adoption of Federal rules listed at 40 CFR 272.1601(d) is not approved by EPA and are not Federally enforceable.

HSWA Provisions

As noted above, the Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are immediately effective in New Mexico and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supercedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (see 50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to 40 CFR part 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to incorporate by reference the decisions already made to authorize New Mexico's program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: September 28, 1993.

A. Stanley Meiburg,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart GG is amended by adding § 272.1601 to read as follows:

§ 272.1601 New Mexico State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), New Mexico has final authorization for the following elements as submitted to EPA in New Mexico's base program application for final authorization which was approved by EPA effective on January 25, 1985. Subsequent program revision applications were approved effective on April 10, 1990, July 25, 1990, and December 4, 1992.

(b) *State Statutes and Regulations.* (1) The New Mexico statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et. seq.

(i) EPA Approved New Mexico Statutory Requirements Applicable to the Hazardous Waste Management Program, September, 1993.

(ii) EPA Approved New Mexico Regulatory Requirements Applicable to the Hazardous Waste Management Program, September 1993.

(2) The following statutes and regulations concerning State enforcement, although not incorporated by reference, are part of the authorized State program:

(i) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1992 Replacement Pamphlet), Sections 74–4–4 (except 74–4–4C), 74–4–4.1, 74–4–4.2C through 74–4–4.2E, 74–4–4.2G(1), 74–4–4.2H, 74–4–4.21, 74–4–4.3 (except 74–4–4.3A(2) and 74–4–4.3F), 74–4–4.7, 74–4–5, 74–4–7B, 74–4–7C, 74–4–10, 74–4–10.1 (except 74–4–10.1C), 74–4–11 through 74–4–14.

(ii) New Mexico Hazardous Waste Management Regulations,

Environmental Improvement Board (EIB), HWMR–6, as amended, February 28, 1991, New Mexico Register, Vol. II-No. 4, Part IX, Sections 902 (except 902.B.1 through 902.B.6); and Part X, Sections 1001, 1004, and 1005.

(3)(i) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(ii) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1992 Replacement Pamphlet), Sections 74–4–3.3 and 74–4–4.2J.

(4) *Unauthorized State Provisions:* The State's adoption of the Federal rules listed below, while incorporated by reference at 40 CFR 272.1601(a), is not approved by EPA and are not enforceable:

Federal requirement	Federal Register reference	Publication date
Liability Requirements.	53 FR 33938	09/01/88
Biennial Report	48 FR 3977 .	01/28/83
Permit Rules: Settlement Agreement.	48 FR 39611	09/01/83
Interim Status Standards Applicability.	48 FR 52718	11/22/83
Chlorinated Aliphatic Hydrocarbon Listing (F024).	49 FR 5308 .	02/10/84
National Uniform Manifest.	49 FR 10490	03/20/84

Additionally, except for the HSWA provisions concerning research, development and demonstration permits (50 FR 28702; July 15, 1985), New Mexico is not authorized to implement any HSWA rule in lieu of EPA. EPA will continue to enforce the Federal HSWA standards for which the State is not authorized until the State receives specific HSWA authorization from EPA.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of New Mexico signed by the EPA Regional Administrator on January 27, 1993, is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et. seq.*

(6) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of New Mexico in January, 1985, and revisions, supplements and addenda to that Statement dated April 13, 1988, September 14, 1988, July 19, 1989 and July 23, 1992, are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et. seq.*

(7) *Program Description.* The Program Description dated and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et. seq.*

3. Appendix A to part 272, is amended by adding in alphabetical order, "New Mexico" and its listing to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

New Mexico

The statutory provisions include:

New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1992 Replacement Pamphlet), Sections 74–4–2, 74–4–3 (except 74–4–3L, 74–4–3O, and 74–4–3R), 74–4–3.1, 74–4–4.2.A, 74–4–4.2B, 74–4–4.2F, 74–4–4.2G(2), 74–4–4.3F, 74–4–7 introductory paragraph, 74–4–7A, 74–4–9, and 74–4–10.1C, as published by the Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, Virginia 22906–7587.

The regulatory provisions include: New Mexico Hazardous Waste Management Regulations, Environmental Improvement Board (EIB), HWMR–6, as amended, February 28, 1991, New Mexico Register, Vol. II-No. 4, Parts I through Part VIII; Part IX, Sections 901, 902.B.1 through 902.B.6; and Part X, Section 1003. Copies of the New Mexico regulations can be obtained from the New Mexico Register, New Mexico Information Systems, P. O. Box 6703, Santa Fe, NM 87502.

* * * * *

[FR Doc. 93–24959 Filed 10–8–93; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 272

[FRL–4783–8]

Hazardous Waste Management Program: Incorporation by Reference of Approved State Hazardous Waste Program for Oklahoma

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses title 40 Code of Federal Regulations (CFR), part 272 to provide notice of the authorization status of State programs, and to incorporate by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA section 3008. EPA intends to incorporate by reference the Oklahoma authorized State program in 40 CFR part 272.

EFFECTIVE DATES: This document will be effective December 13, 1993 unless EPA publishes a prior **Federal Register** (FR) action withdrawing this immediate final rule. All comments on this action must be received by the close of business November 12, 1993. The incorporation by reference of certain Oklahoma statutes and regulations was approved by the Director of the Federal Register as of December 13, 1993 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments should be sent to Dick Thomas, Region 6 Authorization Coordinator (6H–HS), Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, suite 1200, Dallas, TX 75202, 214/655–8528.

FOR FURTHER INFORMATION CONTACT: Dick Thomas, Region 6 Authorization Coordinator (6H–HS), Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region VI, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, suite 1200, Dallas, TX 75202, 214/655–8528.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of RCRA, 42 U.S.C. 6926 *et seq.*, allows the EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. The purpose of today's **Federal Register** document is to incorporate by reference EPA's approval of Oklahoma's base hazardous waste management program and its four revisions to that program.

On December 27, 1984, EPA published a **Federal Register** notice announcing its decision to grant final authorization for the RCRA base program to the State of Oklahoma (see 49 FR 50362). Effective on June 18, 1990 (see 55 FR 14280); November 27, 1990 (see FR 39274); June 3, 1991 (see 56 FR 13411); and November 19, 1991 (see 56

FR 47675), EPA granted Oklahoma additional authorization.

Oklahoma is only authorized for non-HSWA Federal provisions which have been promulgated, through June 30, 1989, in 40 CFR 124 parts 260 through 266, 268, and 270. However, the Oklahoma Industrial Waste Management Regulations include Federal rules that were published in the **Federal Register** between July 1, 1989 and June 30, 1990. Also, Oklahoma has adopted but is not authorized for the September 1, 1988 (53 FR 33938) amendments to 40 CFR parts 264 and 265 addressing liability requirements. Thus, Federal rules published on September 1, 1988 and between July 1, 1989 and June 30, 1990 and included in the State adoption by reference of Federal code at 310:270–3–2(1) and 310:270–3–2(4) through 310:270–3–2(12) are not part of the State's authorized program and are not Federally enforceable.

Oklahoma is not yet authorized to implement any HSWA requirements in lieu of EPA. However in adopting Federal requirements by reference, the State included in its adoption certain of the HSWA-based regulations that were promulgated by EPA prior to July 1, 1990. Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State's method of adopting Federal law by reference has the effect of including unauthorized requirements, EPA will provide this clarification by: (1) Incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in a distinct section of this subpart any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State received specific HSWA authorization from EPA.

On December 31, 1991, Oklahoma renumbered its hazardous waste rules, Rules and Regulations for Industrial Waste Management, ODH Bulletin 0525, and codified them at Title 310 of the Oklahoma Administrative Code (OAC). The table that follows provides the analogs between the former and renumbered provisions of the Oklahoma hazardous waste regulations.

Former Oklahoma provision [1]	Renumbered Oklahoma provision [2]
Chapter One	Subchapter 1
	310:270–1–1
100	310:270–1–2
110	310:270–1–2
120	310:270–1–2
130	310:270–1–2
140	310:270–1–2
150	310:270–1–2
160 (reserved)	
170	310:270–1–2
180	310:270–1–2
Chapter two	Subchapter 3
200	310:270–3–1
210	310:270–3–2
211	310:270–3–3
220–221	310:270–3–4(a)–(b)
230	310:270–3–5
240	310:270–3–6
Chapter three	Subchapter 5
300	310:270–5–1
301	
302	310:270–5–1(1)
303	
304	310:270–5–1(2)
310	310:270–5–3 (Reserved)
320	310:270–5–4 (Reserved)
Chapter five	Subchapter 9
500	310:270–9–1
510	310:270–9–2
520	310:270–9–3
521–522	310:270–9–3(a)–(b)
530	310:270–9–4
531–532	310:270–9–4(1)–(2)
540	310:270–9–5
Chapter six	Subchapter 11
600	310:270–11–1
601–606	310:270–11–1(a)–(f)
610	310:270–11–2
611–612	310:270–11–2(a)–(b)
620	310:270–11–3
621–624	310:270–11–3(a)–(b)
630	310:270–11–4
631–637	310:270–11–4(a)–(g)
Chapter seven	Subchapter 11
700	310:270–13
701–703	310:270–13–1(a)–(c)
710	310:270–13–2
711–713	310:270–13–2(a)–(c)
720	310:270–13–3
730 (reserved)	
740	310:270–13–4
741–743	310:270–13–4(b)–(d)
330	310:270–5–5 (Reserved)
Chapter four	Subchapter 7
400	310:270–7–1
410	310:270–7–2
420	310:270–7–3
430	310:270–7–4

[1] Rules and Regulations for Industrial Waste Management, ODH Bulletin 0525, as amended, June 29, 1989, effective August 17, 1989; April 12, 1990, effective June 4, 1990; and June 21, 1990, effective August 9, 1990.

[2] Industrial Waste Management Regulations, Chapter 270, Title 310 *The Oklahoma Administrative Code*, (SUBCHAPTERS 1 through 19, Sections 310:270–1–1 through 310:270–19–34), (codified December 31, 1991)

EPA provides both notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that EPA will enforce under section 3008 of RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Oklahoma. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Public Law 98–618. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized Oklahoma program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in Oklahoma, the status of Federally approved requirements of the Oklahoma program will be readily discernible.

The Agency will only enforce those provisions of the Oklahoma hazardous waste management program for which authorization approval has been granted by EPA. This document incorporates by reference of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements. Until such time, EPA will enforce the HSWA requirements and not the State analogs.

Oklahoma Authorized Hazardous Waste Program

To incorporate by reference the Oklahoma authorized hazardous waste program, EPA intends to add subpart LL to 40 CFR part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.1851(a) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at 40 CFR 272.1851(e), (f) and (g), respectively.

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Oklahoma enforcement authorities. Section 272.1851(b) of 40 CFR lists those authorized Oklahoma authorities that are part of the authorized program but are not incorporated by reference.

Some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C (see 40 CFR 271.1(i)). As a result, State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.1851(c) of 40 CFR lists for reference and clarity the Oklahoma statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions. Similarly, the State's adoption of Federal rules listed at 40 CFR 272.1851(d) is not approved by EPA and are, therefore, not part of the Federally enforceable program.

HSWA Provisions

As noted above, the Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are immediately effective in Oklahoma and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (see 50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to 40 CFR part 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the part of 40 CFR part 272 applicable to the State's incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to incorporate by reference the decisions already made to authorize Oklahoma's program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Environmental Protection Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: September 23, 1993.

Joe D. Winkle,

Acting Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart LL is amended by adding § 272.1851 to read as follows:

§ 272.1851 Oklahoma State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Oklahoma has final authorization for the following elements as submitted to EPA in Oklahoma's base program application for final authorization which was approved by EPA effective on January 10, 1985. Subsequent program revision applications were approved effective on June 18, 1990, November 27, 1990, June 3, 1991, and November 19, 1991.

(b) *State Statutes and Regulations.* (1) the Oklahoma statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et seq.

(i) EPA Approved Oklahoma Statutory Requirements Applicable to the Hazardous Waste Management Program, September, 1993.

(ii) EPA Approved Oklahoma Regulatory Requirements Applicable to the Hazardous Waste Management Program, September, 1993.

(2) The following statutes and regulations concerning State enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Oklahoma Controlled Industrial Waste Disposal Act, 63 O.S. 1991, Sections 1–2001.1, 1–2003, 1–2003.1, 1–

2004 (except 1–2004(19) through 1–2004(21) and 1–2004(27) through 1–2004(34)), 1–2004.1, 1–2004.2, 1–2005, 1–2005.1, 1–2005.3, 1–2006, 1–2006.1(A), 1–2007, 1–2008(A), 1–2008(G), 1–2008(H)(1), 1–2009.1(B), 1–2011, 1–2012, 1–2012.1, 1–2013, and 1–2013.1.

(ii) Industrial Waste Management Regulations, Chapter 270, Title 310 The Oklahoma Administrative Code, December 31, 1991: Subchapter 3, Section 310:270–3–2(1); Subchapter 11, Sections 310:270–11–1(a)(6), 310:270–11–1(e), 310:270–11–2; Subchapter 13, 310:270–13–1, and 310:270–13–3.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Oklahoma Controlled Industrial Waste Disposal Act, 69 O.S. 1991, Sections 1–2005.2 and 1–2005.3A.

(ii) Industrial Waste Regulations, Chapter 270, Title 310 The Oklahoma Administrative Code, December 31, 1991: Subchapter 11, Sections 310:270–11–1(c) portion addressing application fees, 310:270–11–1(d) portion addressing application fees; Subchapter 13, Section 310:270–13–4; and Subchapter 17.

(4) *Unauthorized State Provisions:* The State's adoption of the Federal rules listed below, while incorporated by reference at 40 CFR 272.1851(a), is not approved by EPA and are, therefore, not enforceable:

Federal requirement	Federal Register reference	Publication date
Liability Requirements	53 FR 33938	09/01/88
Delay of Closure Period for Hazardous Waste Management Facilities	54 FR 33376	08/14/89
Mining Waste Exclusion I	54 FR 36592	09/01/89
Testing and Monitoring Activities	54 FR 40260	09/29/89
Mining Waste Exclusion II	55 FR 2322	01/23/90
Modification of F019 Listing	55 FR 5340	02/14/90
Testing and Monitoring Activities; Technical Corrections	55 FR 8948	03/09/90
Criteria for Listing Toxic Wastes; Technical Amendment	55 FR 18726	05/04/90
Land Disposal Restrictions for Third Scheduled Wastes (Non-HSWA)	55 FR 22520	06/01/90

Additionally, Oklahoma is not yet authorized to implement any HSWA requirements in lieu of EPA. EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of Oklahoma signed by the EPA Regional Administrator on March 22, 1991, is referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of Oklahoma on January 20, 1984 and revisions, supplements and addenda to that Statement dated January 14, 1988 (as amended July 20, 1989, December 22, 1988 (as amended June 7, 1989 and August 14, 1990), November 20, 1989, and September 16, 1990, are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description dated and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272 is amended by adding in alphabetical order, "Oklahoma" and its listing to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Oklahoma

The statutory provisions include:

Oklahoma Controlled Industrial Waste Disposal Act, 63, O.S. 1991, Sections 1–2002, 1–2006.1 (except 1–2006.1(A)), 1–2008(B) through 1–2008(F), 1–2008(H)(2), 1–2008(H)(3), 1–2009, 1–2009.1 (except 1–2009.1(B)(2)), 1–2010, 1–2012.3, 1–2014(A), 1–2014(B) (except the last sentence), 1–2014(C)(2), 1–2014(D), 1–2014(E) and 1–2014.2.

Copies of the Oklahoma statutes that are incorporated by reference are available from West Publishing Company, 50 West Kellogg Boulevard, P.O. Box 64526, St. Paul, Minnesota 55164–0526.

The regulatory provisions include:

Industrial Waste Management Regulations, Chapter 270, Title 310 *The Oklahoma Administrative Code,* December 31, 1991: Subchapter 1, Section 310:270–1–2 (excluding definitions for "Annulus", "Cone of influence", "Fresh water" and "Maximum total pressure gradient"); Subchapter 3, Sections 310:270–3–1 (excluding the phrase "and the Underground Injection Control Program, as amended through July 1, 1990), 310:270–3–2 introductory paragraph, 310:270–3–2(4) through 310:270–3–2(12), 310:270–3–4(a), 310:270–3–5 (excluding the phrase "40 CFR 144.3, 40 CFR 146.3, or"), 310:270–3–6; Subchapter 5 (except 310:270–5–2); Subchapter 7; Subchapter 9 (except 310:270–9–6 and 310:270–9–7); Subchapter 11, Sections 310:270–11–1(a), 310:270–11–1(a)(1) first sentence, 310:270–11–1(a)(2), 310:270–11–1(a)(3), 310:270–11–1(b), 310:270–11–1(c) introductory paragraph (except the phrase "the application fee and"), 310:270–11–1(c)(1) through 310:270–11–1(c)(3), 310:270–11–1(d) introductory paragraph (except the phrase "the application fee and"), 310:270–11–1(d)(1), 310:270–11–1(d)(2) (except the references "144, 146,"), 310:270–11–1(f), 310:270–11–3, 310:270–11–4(a) through 310:270–11–4(e); and Subchapter 13, Sections 310:270–13–2 introductory paragraph, 310:270–13–2(1) and 310:270–13–2(2) first sentence.

Copies of the Oklahoma regulations that are incorporated by reference can be obtained from The Oklahoma Register, Office of Administrative Rules, Secretary of State, 101 State Capitol, Oklahoma City, Oklahoma 73105.

* * * * *

[FR Doc. 93–24960 Filed 10–8–93; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7000

[NM–010–4210–06; NMNM 86979]

Withdrawal of Public Lands for the Ojito Area of Critical Environmental Concern; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 7,320 acres of public lands from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the paleontological, geological, recreational, cultural, watershed, and scenic values of the Ojito Area of Critical Environmental Concern. The lands have been and will remain open

to mineral leasing, except the portion of the Ojito Wilderness Study Area that overlaps the Ojito Area of Critical Environmental Concern, which is not currently open to leasing.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Debby Lucero, BLM Rio Puerco Resource Area, 435 Montano Road NE., Albuquerque, New Mexico 87107, 505–761–8787.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's Ojito Area of Critical Environmental Concern:

New Mexico Principal Meridian

T. 15 N., R. 1 E.,
Sec. 17, E½E½, NW¼NE¼, and W½;
Sec. 18, E½, and SW¼;
Sec. 19;
Sec. 20, E½NE¼, W½, and SE¼;
Sec. 21;
Sec. 28, N½;
Sec. 29;
Sec. 30;
Sec. 31;
Sec. 32, SW¼NE¼, SE¼SW¼, and W½SE¼.
T. 15 N., R. 1 W.,
Sec. 13;
Sec. 24;
Sec. 25;
Sec. 36, SW¼NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼.

The areas described aggregate 7,320 acres in Sandoval County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: September 29, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–24861 Filed 10–8–93; 8:45 am]

BILLING CODE 4310–FB–M

43 CFR Public Land Order 7001

[AK–932–4210–06; AA–8037]

Partial Revocation of Executive Order No. 3406, Dated February 13, 1921; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order insofar as it affects approximately 858.84 acres of National Forest System lands withdrawn for use by the Coast Guard, Department of Transportation, for the Point Arden Lighthouse, the Spanish Islands Lighthouse, and the Tonki Cape Lighthouse. The lands are no longer needed for the purpose for which they were withdrawn. The lighthouses at Point Arden and Spanish Islands are located within the Tongass National Forest. The land withdrawn for the Point Arden Lighthouse is part of the Admiralty Island National Monument and the Admiralty Island National Monument Wilderness, and the land withdrawn for the Spanish Islands Lighthouse is part of the Coronation Island Wilderness, as established and designated by the Alaska National Interest Lands Conservation Act of 1980. The lands at Point Arden and Spanish Islands remain withdrawn from all forms of entry, appropriation, or disposal under the public land laws, and will continue to be subject to the terms and conditions of the Tongass National Forest reservation. The land withdrawn for the Tonki Cape Lighthouse is located within the Chugach National Forest, and has been conveyed out of Federal ownership. This action, as it affects Tonki Cape, is for record-clearing purposes only.

EFFECTIVE DATE: October 12, 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), it is ordered as follows:

1. Executive Order No. 3406, dated February 13, 1921, which withdrew National Forest System lands for lighthouse purposes, is hereby revoked insofar as it affects the following described lands:

Copper River Meridian

Tongass National Forest

(a) Point Arden Lighthouse

Located within Tps. 43 S. Rs. 68 and 69 E., described as Tracts A and B of U.S. Survey No. 1632, excluding the following parcel:
Beginning at U.S.L.M. 1632, as shown on U.S. Survey No. 1632, which is situated at approximate latitude 58°09′05″ N., longitude 134°10′16″ W.;
Thence N. 60° W. to mean high water line;
Thence easterly along the mean high water line to a point S. 60° E. from U.S.L.M. 1632;
Thence N. 60° W. to the point of beginning, containing approximately 5 acres.

The area described contains approximately 385.84 acres.

(b) Spanish Islands Lighthouse

Located within protracted secs. 10 and 15 of T. 68 S., R. 73 E., situated at approximate latitude 55°59′ N., longitude 134°06′ W., excluding the following parcel:
Beginning at a point 100 feet true south of the existing Spanish Island Lighthouse;
Thence along the true east-west line to the mean high water lines on the east and west shores of the northern most Spanish Island. All land located north of this east-west line, including islets and reefs, containing approximately 2 acres.

The area described contains approximately 103 acres.

Seward Meridian

Chugach National Forest

(c) Tonki Cape Lighthouse

A parcel of land located within sec. 19 of partially surveyed T. 21 S., R. 16 W., and secs. 13 and 23 of partially surveyed T. 21 S., R. 17 W., situated at approximate latitude 58°20′ N., longitude 152°00′ W., more particularly described as:

All that part of the cape lying north of a true east and west line, south true one nautical mile for high water line at the northern extremity of the cape, including all outlying islands, islets and rocks. The area described contains approximately 370 acres.

The areas described aggregate a total of approximately 858.84 acres.

2. The land described in paragraph 1(a), Point Arden Lighthouse, is part of the Admiralty Island National Monument and the Admiralty Island National Monument Wilderness, and the land described in paragraph 1(b), Spanish Islands Lighthouse, is part of the Coronation Island Wilderness, pursuant to sections 503, 703, and 707 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2399, 2418, and 2421, and remains withdrawn from all forms of entry, appropriation, or disposal under the public land laws. Any of the land described in paragraph 1(a) that may be outside of the Admiralty Island National Monument or the Admiralty Island National Monument Wilderness, will remain withdrawn from all forms of entry,

appropriation, or disposal under the public land laws until a further opening order is published.

Dated: September 29, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–24864 Filed 10–8–93; 8:45 am]

BILLING CODE 4310–JA–M

43 CFR Public Land Order 7002

[UT–942–4210–06; U–4061, U–2036]

Partial Revocation of Executive Order No. 5327 and Public Land Order No. 4522; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes two oil shale withdrawal orders insofar as they affect 50 acres of public land. The land is no longer needed for the purpose of the withdrawals, and the revocation is necessary to permit disposal of the land to the State of Utah pursuant to a Quantity Grant Selection application. The land has been and will continue to be open to oil and gas leasing.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Randy Massey, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155, 801–539–4119.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is hereby ordered as follows:

1. Executive Order No. 5327, and Public Land Order No. 4522, which withdrew oil shale deposits and the lands containing such deposits for protection of oil shale values, are hereby revoked insofar as they affect the following described land:

Salt Lake Meridian

T. 5 S., R. 19 E.,
Sec. 12, SE¼NW¼ and N½N½SW¼NE¼.

The area described contains 50 acres in Uintah County.

2. At 9 a.m. October 12, 1993, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on October 12, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on October 12, 1993, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: September 29, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–24860 Filed 10–8–93; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

Charter Service Regulation; Technical Amendments

AGENCY: Federal Transit Administration, DOT.

ACTION: Final rule; technical amendments.

SUMMARY: This document makes two technical amendments in the Federal Transit Administration (FTA) Charter Service Regulation. The first amends the final rule establishing the charter services demonstration program mandated by section 3040 of the Intermodal Surface Transportation Efficiency Act, by extending the program through October 31, 1994. This extension is necessary to accommodate participants who were unable to begin their demonstration programs on the effective date of August 9, 1993. It will allow them to conduct their programs for a full 12-month period beginning at any time after the effective date of the rule and ending on October 31, 1994. The second amends the regulation to reflect a delegation to the Regional Administrators of responsibility for deciding complaints filed by interested parties.

EFFECTIVE DATE: October 12, 1993.

FOR FURTHER INFORMATION CONTACT: Rita Daguillard, Deputy Assistant Chief Counsel for General Law, FTA Office of Chief Counsel, (202) 366–1936.

SUPPLEMENTARY INFORMATION: A final rule published in the **Federal Register** on July 9, 1993 (58 FR 36894), established a charter services demonstration program which would allow transit operators to provide charter services to meet the needs of government, civic, charitable and other community activities, as directed by section 3040 of the Intermodal Surface Transportation Efficiency Act. Under the program, recipients in eight sites within four States will be allowed to provide direct charter services as determined by local officials. The rule provided that the demonstration program would be conducted from August 9, 1993, to August 9, 1994.

Because of specific local circumstances, however, certain participants were unable to begin their demonstration programs on the effective date of August 9, 1993. In order to provide these participants with a full 12-month implementation period, the FTA is extending the program through October 31, 1994. Therefore, participants may provide the services described in 49 CFR 604.9(b)(8) for any 12 month period beginning at any time after the effective date of the rule and ending on October 31, 1994. By allowing each participant a full 12-month implementation period, FTA believes that it will be able to more effectively evaluate each local program, taking full account of seasonal variations.

This document also amends Subpart B ("Complaint Process") of 49 CFR part 604 (specifically sections 604.15 through 604.21) to reflect a delegation to the FTA Regional Administrators of responsibility for deciding complaints filed by interested parties. This delegation became effective on December 1, 1992, under FTA Order 1100.50, Change 2 ("FTA Delegations of Authority"), which provided for increased regional authority. Thus, "Regional Administrator" will be substituted for "Chief Counsel" wherever it appears in subpart B of 49 CFR part 604.

VI. Regulatory Impacts and Assurances

A. Executive Order 12291

FTA has determined that this action is not major within the meaning of Executive Order 12291 or significant within the meaning of Department of Transportation regulatory policies and procedures. Since this final rule makes only technical amendments to current

regulatory languages, it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354, the FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act.

C. Paperwork Reduction Act

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

D. Federalism

This action has been reviewed under Executive Order 12612 on Federalism and the FTA has determined that it does not have implications for principles of Federalism that warrant the preparation of a Federalism Assessment. If promulgated, this rule will not limit the policy making or administrative discretion of the States, nor will it impose additional costs or burdens on the States, nor will it affect the States' abilities to discharge the traditional State governmental functions or otherwise affect any aspect of State sovereignty.

List of Subjects in 49 CFR Part 604

Bus, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, title 49, Code of Federal Regulations, part 604, Charter Service, is amended as follows:

PART 604—[AMENDED]

1. The authority citation for part 604 continues to read as follows:

Authority: Federal Transit Act, as amended (49 U.S.C. 1601 *et seq.*); 23 U.S.C. 103(e)(4), 142(a), and 142(c); and 49 CFR 1.51.

2. Section 604.9 is amended by revising paragraph (b)(8)(iv) to read as follows:

§ 604.9 Charter service.

* * * * *

(b)(8) * * *

(iv) The service described in this subsection may be provided only during the demonstration program to be conducted for any 12-month period between August 9, 1993, and October 31, 1994, in the following sites:

(A) Monterey, California;

(B) Oklahoma City, Oklahoma;

(C) St. Louis, Missouri;

(D) Yolo County, California;

(E) Four sites within the State of Michigan to be selected by the Michigan Department of Transportation and approved by the Federal Transit Administration prior to the start of the demonstration program.

3. Section 604.15 through 604.21 is amended by removing the phrase "Chief Counsel" and inserting in its place "Regional Administrator" wherever it appears.

Issued: October 6, 1993.

Grace Crunican,

Deputy Administrator.

[FR Doc. 93–24956 Filed 10–8–93; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 930497–3097; I.D. 052093C]

Summer Flounder Fishery; Correction

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

ACTION: Final rule; corrections.

SUMMARY: On September 24, 1993 (58 FR 49937), a final rule was published to implement the conservation and management measures prescribed in Amendment 4 to the Fishery Management Plan for the Summer Flounder Fishery (FMP). Amendment 4 revised the percentage of the commercial quota allocated to each state and the manner in which 1994 state quotas will be adjusted for quota overages that may occur in 1993. This document clarifies the relationship between the emergency interim rule published on May 7, 1993 (58 FR 27214); the emergency interim rule, extension of effective dates published on July 26, 1993 (58 FR 39680); and the final rule published on September 24, 1993 (58 FR 49937).

EFFECTIVE DATE: October 25, 1993.

FOR FURTHER INFORMATION CONTACT: Shirley E. Whitted, Fishery Management Specialist, (301) 713–2341.

Correction of Publication

Accordingly, on page 49939 in the third column, the final rule published on September 24, 1993, that was the subject of FR Doc. 93–23426, is corrected as follows:

A. After the authority citation and before amendatory instruction 2., add amendatory instruction 1a. to read as follows:

1a. Effective October 25, 1993, the emergency interim rule, published on May 7, 1993, temporarily suspending § 625.20(d)(1) and temporarily adding § 625.20(d)(3) from May 4, 1993, through August 5, 1993, and the emergency interim rule, extension of effective dates published on July 26, 1993, extending the effective dates from August 6, 1993, through November 3, 1993, are terminated.

B. In amendatory instruction 2., the word "In" is revised to read: "Effective October 25, 1993, in".

Dated: October 5, 1993.

Samuel W. McKeen,

Program Coordinator, National Marine Fisheries Service.

[FR Doc. 93–24885 Filed 10–8–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 195
Tuesday, October 12, 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

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560–AD18

1994 Rice Program and Adjusted World Price for Broken-Kernel Rice

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations to set forth the acreage reduction percentage, if any, for the 1994 crop of rice. This action is required by section 101B of the Agricultural Act of 1949, as amended (the 1949 Act). This proposed rule outlines a range of acreage reduction percentage options proposed for the 1994 crop of rice and requests comments regarding price support rate adjustments for aroma and grade of rice, the method for calculating the adjusted world price for broken kernel rice, and how to determine an amount that is fair and equitable in relation to wheat and feed grains in calculating the target-price deficiency payment rates for the 1994 rice crop.

DATES: Comments must be received on or before November 12, 1993 in order to be assured of consideration.

ADDRESSES: Comments must be mailed to: Deputy Administrator, Policy Analysis, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3090–S, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Gene S. Rosera, Agricultural Economist, Fibers and Rice Analysis Division, ASCS, USDA, room 3758–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This rule has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "major." It has been determined that an annual effect on the economy of $100 million or more may result from implementation of the provisions of this proposed rule.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is applicable to this proposed rule since the Commodity Credit Corporation (CCC) is required by section 105B(o) of the 1949 Act to request comments with respect to the subject matter of this rule.

Preliminary Regulatory Impact Analysis

A Preliminary Regulatory Impact Analysis was prepared, which determined that this regulation will have no significant impact on a substantial number of small entities because the particular acreage reduction percentages considered will not affect the paperwork, reporting, or compliance burdens of the small entities in the program. Accordingly, CCC certifies that the rule will have no significant impact on a substantial number of small entities. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

Environmental Evaluation

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

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this proposed rule applies, are: Rice Production Stabilization—10.065.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not require the exhaustion of any administrative appeal remedies.

Executive Order 12372

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

Paperwork Reduction Act

The amendments to 7 CFR part 1413 set forth in this proposed rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. 35.

Request for Public Comment

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

In accordance with section 101B of the 1949 Act, an acreage reduction program (ARP) may be implemented for the 1994 rice crop if it is determined that the total supply of rice, in the absence of such a program, would be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices, and to meet a national emergency.

Land diversion payments also may be made to producers if needed to adjust the total national acreage of rice to desirable goals. A paid land diversion program is not considered because, given the considered program options, it is not needed to achieve the statutory stocks-to-use levels of rice.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction (from 0 to 35 percent) to the rice crop acreage base for the crop for each rice producing farm. In making such a determination, the number of acres placed into the agricultural resources conservation program established under subtitle D of title XII of the Food Security Act of

1985, as amended, must be taken into consideration.

Producers who knowingly produce rice in excess of the permitted acreage for the farm plus any rice acreage planted in accordance with the flexibility provisions are ineligible for loans and purchases and all payments with respect to that crop on the farm.

The Secretary is required to carry out an acreage limitation program in a manner that will result in carry-over stocks equal to 16.5 to 20.0 percent of the simple average of the total disappearance (including domestic, export, and residual disappearance) of rice for each of the 3 marketing years preceding the year for which the announcement is made. The 1994-crop options considered are:

Option 1. 0-percent ARP.
Option 2. 2.5-percent ARP.
Option 3. 5.0-percent ARP.

The estimated impacts of these options are shown in this table.

ESTIMATED IMPACTS OF 1994 ARP OPTIONS

Options	1	2	3
ARP (%)	0.0	2.5	5.0
Participation (%)	96	96	96
Planted acres (1,000 acres)	3,156	3,070	2,984
Production (million hundredweight)	175.6	170.4	165.3
Domestic/residual use (million hundredweight)	103.6	103.4	103.2
Exports (million hundredweight)	80.5	76.5	72.5
Ending stocks (million hundredweight)	30.2	29.3	28.4
Ratio of ending stocks to prior 3 years' use (%)	17.5	17.0	16.5
Season average price ($ per hundredweight)	5.65	5.80	5.95
Net outlays (million $)	1005	977	948

Accordingly, comments are requested whether to establish an ARP for the 1994 rice crop, and if so, at what reduction percentage.

The final determination of this percentage will be set forth at 7 CFR 1413.54(a)(4).

In accordance with section 403 of the 1949 Act, appropriate adjustments may be made in the support price for any commodity for differences in grade, type, staple, quality, location, and other factors. Discounts to the 1994-crop price support rates for aromatic rice varieties may be appropriate because of the special storage and merchandising requirements of such rice.

Accordingly, comments are requested whether to establish discounts to the price support rates for aromatic rice varieties, and if so, the level of such discounts.

A difference of $1.00 per hundredweight between the support rates for milled whole kernels of long and medium/short grain has been effective since the 1987 crop year. Comments are requested regarding an appropriate difference between price support rates for milled whole kernels of long grain and medium/short grain for the 1994 crop of rice.

Discounts for price support rates for lower grades of rice have been established for prior crop years at levels reflecting the lower market value of such rice. Rough rice pledged as collateral for price support loans is currently subject to discounts that have been effective since 1983. These discounts are $0.30 per hundredweight for U.S. Grade #3, $0.60 per hundredweight for U.S. Grade #4, $1.00 per hundredweight for U.S. Grade #5, and $2.00 per hundredweight for U.S. Grade #6. Accordingly, comments are requested as to the level of premiums and discounts that would be appropriate for any grade of 1994-crop rice.

In accordance with section 101B(a)(5)(A) of the 1949 Act, the Secretary may permit rice price support loans to be repaid at the prevailing world market price for rice, as determined by the Secretary. In determining the world market price of rough rice, the world market price of milled broken kernel rice has been established at 50 percent of the world market price for milled long grain whole kernel rice. USDA has received comments that this price relationship results in excessive program outlays and is inconsistent with regulations at § 1421.25(a)(5)(ii). These regulations specify that the world market value of broken kernels shall be based upon the relationship of whole and broken kernel world prices as estimated from observations of prices at which rice is being sold in world markets.

Accordingly, comments are requested regarding an appropriate method for establishing the world market price for milled broken kernel rice. Comments are specifically sought regarding foreign origins and grades of milled broken-kernel rice suitable for determining world market prices of broken rice.

In accordance with section 101B(c)(1)(B) of the 1949 Act, the 1994-crop deficiency payment rate shall be the amount by which the target price exceeds the higher of the loan level or the lower of (1) the national average price received during the calendar year containing the first five months of the marketing year, or (2) the 5-month price plus an amount determined by the Secretary to be fair and equitable in relation to wheat and feed grains. The adjustments to the 5-month price provided by this section are 10 cents per bushel for wheat and 7 cents per bushel for feed grains.

Accordingly, comments are requested regarding how to determine an amount to be added to the 5-month weighted average price received for rice that is fair and equitable in relation to the adjustments of the wheat and feed grains 5-month prices.

List of Subjects in 7 CFR Part 1413

Cotton, Feed grain, Price support programs, Rice, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by:

A. Revising paragraph (a)(4)(iii),

B. Adding paragraph (a)(4)(iv),

C. Adding and reserving paragraph (d)(4)(iv) and adding paragraph (d)(4)(v) to paragraph (d)(4) as proposed at 58 FR 41641 (August 5, 1993) and at 58 FR 51934 (October 5, 1993) to read as follows:

Sec. 1413.54 Acreage reduction program provisions.

(a) * * *

(4) * * *

(iii) 1993 rice, 5 percent;

(iv) 1994 rice, within the range of 0 to 35 percent, if supplies are excessive, as determined and announced by CCC with no paid land diversion.

* * * * *

(d) * * *

(4) * * *

(v) Shall not be made available to producers of rice.

* * * * *

Signed on October 5, 1993 at Washington, DC.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–24945 Filed 10–6–93; 3:47 pm]

BILLING CODE 3410–05–P

Rural Electrification Administration

7 CFR Part 1703

Rural Economic Development Loan and Grant Program: Grants

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration(REA) recently revised its Rural Economic Development Loan andGrant Program to provide additional information to potentialapplicants on the selection factors and rating criteria, allowmonthly submittal of applications, and establish a maximum amountof project funding as a fixed percentage of allocated fundsrather than the $100,000 limit in the existing rule. Thesechanges were published in a final rule on September 25, 1992. REA proposes to amend this final rule on the Rural EconomicDevelopment Loan and Grant Program to reflect additionalinformation for the grant portion of the regulation. Theproposed amendment would add and revise procedures for approvingand administering grants and would clarify eligible uses of grantfunds, supplemental funds requirements, and administrativerequirements for grant funds.

DATES: Written comments must be received by REA orcarry a postmark of equivalent no later than November 12, 1993. REA requires an original and three copies of all comments (7 CFRpart 1700).

ADDRESSES: Submit written comments to Blaine D.Stockton, Jr., Assistant Administrator, Economic Development andTechnical Services, Rural Electrification Administration, room4025, South Building, U.S. Department of Agriculture, 14th andIndependence Avenue, SW., Washington, DC 20250091500. The publicmay inspect written comments on this proposed rule in room 2234of the South Building between 8:30 a.m. and 5 p.m. on officialworkdays (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Blaine D.Stockton, Jr., Assistant Administrator, Economic Development andTechnical Services, Rural Electrification Administration,telephone number (202) 720–9552.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance withExecutive Order 12291 and Departmental Regulation 1512091. Thisaction has been classified as "nonmajor" because it does notmeet the criteria for a major regulation as established by theOrder.

Executive Order 12778

This proposed rule has been reviewed under Executive Order12778, Civil Justice Reform. If adopted, this proposed rule:

(1) Will not preempt any State or local laws, regulations,or policies, unless they present an irreconcilable conflict withthis rule;

(2) Will not have any retroactive effect; and

(3) Will not require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, theAdministrator certifies that this action would not have asignificant economic impact on a substantial number of smallentities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on current and historical fundinglevels for this program and a projected average size loan and/or grant in the range of $300,000 to $400,000, it is estimated that 50 to 60 loans and/or grants will be made nationwide each year. It is projected that the Rural Economic Development Loan and Grant Program will have a limited impact upon small businesses because of the program's unique delivery system; i.e., loans and grants will be made through REA financed electric and telephonecooperatives. These cooperatives do not operate as credit institutions, thus they do not seek funds for the expressed purpose of loan portfolio expansion. Rather, REA financed cooperatives selectively request REA funding through this program to enhance economic development in rural areas by funding a limited number of development projects. Since credit is channeled to areas which are generally underdeveloped and financially depressed, job creation and economic development resulting from newly emerging businesses and community facilities funded by REA does not pose undue competition or other adverse effects upon existing businesses. Therefore, this proposed rule will have no effect upon businesses or entities other than those to be funded through this program.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 9609511) and section 3504 of that Act, the information collection and recordkeeping requirements contained in this proposed rule have been approved by OMB under control number 0572090090. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Intergovernmental Review

The program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials, with the exception of applications for Project Feasibility Studies.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.854, Rural Economic Development Loans and Grants. This catalog is available a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Background

REA is proposing this action to establish procedures for approving and administering grants. The selection of applications financed with grants would

be based on a preference for projects that meet the Act's purpose of benefitting an entire rural area rather than a particular business or individual. REA believes the following projects best meet this purpose: 1) The establishment and/or operation of a revolving loan program by REA Borrowers; and 2) Pass-through grants in conjunction with loans for: (a) project feasibility studies, (b) technical assistance by non-profit organizations for business start-ups, business planning, and market research, (c) community development assistance by non-profit organizations, (d) projects operated on a profit or non-profit basis that enhance the overall quality of medical care of rural residents, and (e) projects by profit or non-profit organizations which encourage the use of advanced telecommunications for educational and medical services.

Several conditions need to be established under this program in order to maximize the benefits of the grant program, conserve the limited funds available, and provide for the efficient administration of grant making by REA.

First, with the exception of the establishment and/or operation of a revolving loan programs, grants will be made only in conjunction with rural development loans. This will increase the number of projects which REA Borrowers may finance by reducing the amount of zero-interest loan funds required to fund projects and reducing the debt repayment obligation for those projects which would be unable to repay 100 percent loan funding. In addition, grants made in conjunction with loans will result in the greatest chance for project success because the concurrent loan repayment obligation will require, to the extent possible, dedication and commitment to the success of projects by grant recipients. Further, the loan repayment requirements will provide a measurable yardstick to enable REA Borrowers to effectively evaluate the viability of proposed projects and eliminate those projects from consideration which are clearly not viable. Finally, from an administrative standpoint, REA believes that grants made in conjunction with loans will eliminate the need for complex regulations, and provide for more efficient and effective program administration.

The sole exception to the requirement for making grants in conjunction with loans is the establishment and/or operation of a revolving loan program by REA Borrowers. A locally administered revolving loan program is an effective use of grant funds for local involvement and control in lending activity. Grant funding will encourage and enable REA Borrowers to become more active and responsive in local rural economic development activity. Grant funds to REA Borrowers for local revolving loan programs will provide the most powerful multiplier for rural economic development and, since REA proposes to limit funding to REA Borrowers on a non-pass-through basis, grants will be awarded without zero-interest loans. REA Borrowers will be required to lend grant funds at zero-percent interest during the initial lending cycle. The operation of the revolving loan program after the initial lending cycle would be in accordance with written agreement between REA and REA Borrowers.

Second, as with zero-interest loans, all REA projects funded with grants will require a minimum of 20 percent supplemental funding for project costs. Supplemental funds may come from the project owner in the form of equity funds, private sources, state and local government sources, other Federal Government sources, the borrower, or other sources. For grants to REA Borrowers to establish revolving loan funds, up to 80 percent of the revolving fund may be funded with the grant funds. For all other projects eligible for loan and grant funding, the portion of project costs eligible for REA funding may be funded up to 20 percent with grant funds.

Third, for grants made in conjunction with zero-interest loans, grant funding will be provided only in sufficient amount necessary for a feasible project. A feasible project is a project which generates sufficient income to pay operating expenses and pay debts. A feasible project must also generate sufficient income to cover depreciation of equipment or facilities acquired or constructed in connection with the project. Depreciation must be based on recognized depreciation schedules as set forth by the United States Internal Revenue Service. A project which generates sufficient revenue to show feasibility without grant funds is not eligible for a grant. REA feels this provision appropriately targets limited grant funds for those projects most in need of grant funds.

Fourth, in determining the eligible amount of a grant, REA proposes to base the appropriate amount of grant funding on a typical year of operation, when the project has generally reached its target income earning potential. Grant awards would be unnecessarily large if based on project debt repayment ability during the start-up phase when project income is relatively low. The current regulation allows a deferral of loan payments for up to two years for new business start-ups and a one year deferral for business expansion. Prior to awarding a grant for a project where a start-up phase indicates lower project income, the applicable deferral provisions will be considered to determine if the project can repay a 100 percent zero-interest loan plus the deferred amount after the deferral period. Therefore, in cases where projected net income for a project is relatively low in the beginning years of the project, REA will require the use of the deferral provisions in the regulation and base grant eligibility on project debt repayment ability after the authorized deferral period, if this would result in a lower percentage of grant funding necessary to fund the project.

Fifth, grant funding will be channeled, to the extent practicable, to entities which have a broad impact on rural economies. REA recognizes that successful for-profit and non-profit entities alike can provide broad economic stimulus. However, given program funding limitations, REA believes it is appropriate to target grant funding to non-profit entities. Providing grant funding to select for-profit entities could be perceived as arbitrarily and inequitably placing those entities in an unfair competitive position relative to other for-profit entities which are not funded. Therefore, to ensure an atmosphere of fair competition, REA will fund those non-profit enterprises which provide a broad multiplier of benefits to the rural community, but which do not compete with other enterprises based on the profit motive. Non-profit enterprises operating business incubators and community driven projects for community facilities, industrial parks and infrastructure, such as water and sewer systems and industrial parks, provide a fertile base for rural economic development in a community by multiple enterprises, both profit and non-profit. The existing loan provisions of the zero-interest loan and grant program adequately fulfill the needs of for-profit enterprises.

REA proposes to allow grant funding provisions in certain cases regardless of whether projects are operated on a non-profit or on a for-profit basis. Grant funding will be available for project feasibility studies and technical assistance. Grant funding for these purposes irrespective of entity status isconsistent with specific provisions of the Act. Grants in conjunction with zero-interest loans will help ensure successful job creation projects by for-profit enterprises, as well as effective broad based community development assistance by not-for profit entities. Regarding for-profit entities, REA does not believe this provision causes unfair

competition because grant funding to those entities will be limited to the costs incurred for feasibility studies and technical assistance, and no grant assistance will be provided to for-profit entities for other capital costs or operating costs. In addition, grant funding will be provided irrespective of entity status for enhancement of medical care, and advanced telecommunications for educational and medical services. These types of projects provide broad based benefits regardless of the type of entity which is funded. Because of the critical need for these services and the limited number of entities which can feasibly undertake such enterprises in rural areas, grant funding to for-profit entities which provide these services will not result in unfair competition.

The Establishment and/or Operation of a Revolving Loan Fund by REA Borrowers

REA intends to finance through grants up to 80 percent of the cost of establishing revolving loan funds which will provide seed money to those REA Borrowers who demonstrate a willingness and desire to finance at a local level potential rural development activities. REA Borrowers who demonstrate strong interest in economic development are capable of administering the congressional intent of the program with limited oversight after Federal grant fund disbursement is initially monitored by REA. In accordance with the Act, grant assistance will be provided to REA Borrowers; however, REA's desire to exercise due diligence to ensure the proper use of grant funds necessitates that funds remain in control of REA Borrowers, on a non pass-through basis. REA will require that the initial lending of the grant monies by REA Borrowers be in accordance with REA policies and procedures, and REA personnel will monitor the initial loans. After the first cycle of lending is completed, the REA Borrowers will maintain the revolving fund in accordance with a prior agreement with REA. Revolving loan funds will, in effect, provide local lending control by REA Borrowers for local projects, along with local responsibility. An REA borrower administering a revolving loan account must have a rural development plan in which lending parameters, such as maximum loan amount and type(s) of eligible projects, would be established for a particular area. An REA borrower that receives a grant for a revolving loan fund will be encouraged to fund projects using the revolving fund beforerequesting a pass-through zero-interest loan and grant from REA. If the proposed project type or funding requirements does not fit within borrower revolving fund parameters, revolving funds are exhausted, or if the project requires a higher level of funding than the borrower's limited funds allow, an REA borrower could fund projects with pass-through loans and grants, subject to Agency requirements.

The revolving-loan programs that REA would consider financing with grant funds will need to comply with several restrictions. First, the program will not use more than 10 percent of its funds to cover operating expenses, including the administrative costs of administering the revolving fund and the provision for providing technical assistance to project owners. This restriction is designed to avoid a program that will use a substantial amount of grant funds for purposes such as raising additional funds rather than financing rural economic development and job creation projects. The second restriction will require that loans made with the initial REA grant carry an interest rate of zero percent. This restriction is based on the interest rate of zero percent on the REA loans made from this program. Loans made with repayments of the initial loan would carry an interest rate in accordance with prior agreement between the REA borrower and REA. In addition, REA will require that Federal grant funds be disbursed on a reimbursement basis. Under this provision, Borrowers providing initial loans under the revolving loan fund will be required to advance their own funds and utilize other financing as necessary to fund the projects prior to requesting reimbursement from REA. This requirement is necessary to ensure that grant funds are handled in accordance with USDA's Uniform Assistance Regulation 7 CFR parts 3015 and 3016 for grants, which requires Federal agencies to formulate procedures which minimize the time between grant disbursement and usage for the project, and Federal Agencies to retain full oversight for each disbursement of Federal grant funds. REA considered all practicable alternatives to meet these mandatory Departmental requirements; however, alternatives which were explored would necessitate complicated and excessively burdensome and costly regulations for both REA Borrowers to comply with and REA to administer. The reimbursement requirement provides a relatively uncomplicated mechanism which, within pre-established grant agreement parameters and the borrower's rural development plan, maximizes REA borrower discretion to initially fund projects. REA believes that the resultant cost savings and flexibility afforded Borrowers and REA by this less cumbersome regulation outweighs the initial cost incurred by Borrowers to "front" the financing for rural development projects. In any case, the disbursement procedures contained in this proposed rule apply only to REA grant funds which are disbursed for projects initially funded under the revolving loan fund. Repayments fromthose loans initially made from Federal grant funds will benon-Federal in character, and Borrowers will not be subject tothe Federal disbursement requirements contained in this proposed rule.

There will also be four other restrictions on the revolving loan program for Federal grant funds which are disbursed. First, REA Borrowers will be required to identify an adequate number of projects eligible for funding which would be funded by REA grant funds within three years; second, no loans will be authorized for purposes that are ineligible for REA zero-interest loans; third, grant funds which are not disbursed will be cancelled if the program is terminated; and fourth, in accordance with written prior agreement, REA Borrowers will be required to utilize the repayments of loans made with the grant funds for rural economic development and job creation projects unless REA agrees otherwise.

To extend additional latitude for REA Borrowers to promote rural economic development using their revolving loans, REA proposes to eliminate the requirement in paragraph (f) of 1703.28 that sets a minimum rural economic loan and grant at $10,000. This will allow REA Borrowers to make small loans to assist small projects. This exception applies only to the revolving loan provision. Further, REA proposes to allow an REA borrower to use revolving loan funds to refinance creditors which provide interim or construction financing for eligible purposes in connection with viable projects. Refinancing for the sole purpose of replacing higher interest conventional financing with zero-interest revolving loan funds is not be authorized. This refinancing provision is consistent with other Agencies' rural development revolving loan fund provisions.

Finally, an important policy consideration is how grant funds for revolving loan funds will be utilized. In light of Federal grant regulations which necessitate full Agency oversight of grant fund approval and disbursement

by REA, it has been determined that compliance with the regulations necessitates that, at time of application, REA Borrowers identify a sufficient number of rural development projects in the planning stage requiring zero-interest loans equal to the amount of grant funding requested.

Since zero-interest loan demand presently exceeds available funding, REA intends to limit the types of projects which are funded initially with grants for revolving funds to those community development projects by non-profit enterprises operating business incubators, and community driven projects for community facilities, industrial parks and infrastructure, such as water and sewer systems and industrial parks. REA Borrowers may also use grant funds initially to fund projects, regardless of entity status, for educational and medical facilities, and enhancement of educational services and medical care through advanced telecommunications. Feasibility studies and technical assistance may also be funded.

In many rural areas, economic development is stymied due to inadequate community services and infrastructure, which results in the inability of communities to attract and sustain business growth. In determining appropriate types of projects to most effectively use Federal grant funds for revolving loan funds, especially in chronically depressed rural areas with inadequate community facilities, REA will encourage Borrowers to cooperate with local community leaders in developing community facilities plans, or other community development plans which identify rural community needs. REA believes the use of Federal revolving loan funds for community development facilitates effective partnerships between REA borrowers and community leaders, and lays the groundwork for sustained economic development. As community facilities are developed to attract business formation, pass-through zero-interest loans and grants, and the repayment of initial loans from revolving loan funds for community development projects could then be used by REA borrowers for any rural economic development purpose, including projects by for-profit entities which result in direct job creation as previously agreed with REA.

Project Feasibility Studies and Technical Assistance

REA intends to provide grant funds for independent feasibility studies and technical assistance for planning, management assistance and consultation to enable the success of individual projects that will provide substantial benefits to the rural community. Grant funding for independent feasibility studies and technical assistance will be available only in conjunction with zero-interest loans.

Feasibility studies will include consultation, studies or research from qualified entities which address the important aspects of project assessment and planning to ensure, to the extent practicable, the success of projects. Feasibility studies will address the market, technical, economic, financial and managerial issues related to project feasibility. Feasibility studies may be funded in connection with viable projects as a reimbursement to the project owner for expenses incurred during the initial planning stages of the project prior to project funding by REA.

Technical assistance will include managerial, technical, financial and operational consultation by independent qualified entities. Technical assistance will assist project owners to identify and evaluate problems or potential problems and provide training to enable a project owner to successfully implement, manage, operate and maintain a viable project which is financed with zero-interest loan funds.

If REA approves loan funding for a project, REA proposes to provide grant funding up to 20 percent of the loan to cover the cost of the feasibility study and/or technical assistance for the project. This will help enable those projects to start out with a lower debt, and help enhance project feasibility.

REA will not finance initial feasibility studies or technical assistance that would provide general guidelines for rural development in an area, nor will REA finance studies or consultation for the sole purpose of determining whether or not a project could be financed under the loan portion of this regulation. This preliminary investigation material, in our opinion, is available and obtainable from both private and public organizations that promote and disseminate developmental information at the local, state, regional and/or national basis. Therefore, there is no need for redundant studies or information regarding general business operations.

REA intends to fund only those feasibility studies and technical assistance consultations which are necessary to plan or implement a viable project approved for loan funding by REA. Feasibility studies or technical assistance consultation performed in connection with projects which are not approved for loan funding under the zero-interest loan and grant program will not be funded. General feasibility studies financed independently of loan program criteria would not be a productive use of limited grant funds. Under this scenario, REA would very likely be inundated with grant funding requests for unproductive studies yielding no substantive economic development; thus, grant funding would not be utilized in the most productive manner. Technical assistance for non-REA funded projects could positively impact rural economic development; however, REA believes that technical assistance in conjunction with REA funded projects is the most effective use of grant funds. Further, grant funded feasibility studies and technical assistance consultations independent of REA funded projects would require complex regulations to objectively evaluate the relative merits of numerous and diverse studies and consultations, and the additional personnel costs associated with review and administration of a grant program separate from the zero-interest loan program would result in excessive administrative costs to REA.

Business Incubators Established by Non-Profit Organizations for Business Formation

REA intends to provide grant funds to non-profit organizations to establish business incubators which will assist in developing emerging businesses. Business incubators funded under this program will be those facilities in which single or multiple small businesses may use premises, support staff, computer software, hardware, telecommunications equipment, machinery, janitorial services, utilities, or share other overhead facilities. Grant funds may also be used to enable incubators to provide technical assistance to emerging businesses for managerial, planning, technical, financial and operational functions. REA expects that the grant funds would be sufficient to enable a business to become established and self-sustaining within a 12 to 24 month period. A for-profit enterprise would not be eligible for a pass-through grant to establish an incubator. However, a for-profit business which utilizes the services of the incubator could be funded with a zero-interest loan.

Community Development Assistance by Non-Profit Organizations

REA intends to provide grant funds to facilitate job creation projects or other projects that provide needed facilities and services which will promote economic development in rural communities. Examples are the development of non-profit distributional

and collection enterprises for local cottage industries, industrial parks and 911 or enhanced 911 services. In addition, if other Federal, state or local sources of funding are not available or not sufficient, grants may be used for community equipment, such as firefighting or ambulance equipment, that fills a documented community need.

Projects To Be Operated on a Profit or Non-Profit Basis That Enhance the Overall Quality of Medical Care of Rural Residents

REA intends, in conjunction with loan applications, to provide grant funds for the acquisition of equipment or construction of the physical plant, including buildings, for health care facilities where it can be demonstrated that existing health care facilities are inadequate or nonexistent in the community or in close proximity thereto. The need to attract qualified medical personnel to some rural communities is recognized as a major obstacle to attracting or retaining businesses and residences in rural areas. It is anticipated that this provision would be used in conjunction with the REA Distance Learning and Medical Link Grant (DLML) program set forth in 7 CFR part 1703, subpart D, to provide infrastructure as needed, in addition to DLML equipment. However, this provision could be used independently of the DLML program. While providing medical links in some areas may encourage more medical care services, the acquisition of equipment or construction of physical plant facilities, including buildings, for health care facilities will also be needed.

Projects Providing Advanced Telecommunications Services and Computer Networks for Medical and Educational Services

REA intends to provide grant funds to establish advanced telecommunications systems and computer networks for medical and educational services. In the past, rural development loan funds have been provided for these services, including interactive video and computer networks, in order to provide medical and job training or other educational services. This proposal allows for grants in addition to loans enabling advanced telecommunications to be established in economically depressed areas which otherwise would not be able to meet the debt repayment requirements of a 100 percent loan. This provision finances much of the same types of equipment as does the REA DLML grant program; however, it differs in two important respects. First, whereas the primary goal of the DLML program is to establish advanced telecommunications in order to deliver educational and medical services, the thrust of this grant provision is to enhance rural economic development efforts by providing the key ingredients for economic growth. Adequate educational capability targeted to specific groups, such as job retraining for displaced workers, skills enhancement for employed workers, vocational and/or advanced technology training for those desiring employment, and reliable medical care for workers and their families, will result in the ability of rural areas to stabilize and strengthen their population base, attract new businesses and thus facilitate increases in economic activity.

Second, unlike the DLML program, this provision does not provide for 100 percent grant funding. However, zero-interest loans and grants under this provision will provide private businesses or non-profit entities in rural areas or attracted to rural areas the ability to establish advanced telecommunications or computer hook-ups to facilitate job training, educational skills and provide medical care. This grant provision coupled with the existing loan provisions offers a viable alternative for funding these projects. This provision, therefore, fills an important niche to foster rural economic development through advanced telecommunications services for educational and medical services. The telecommunications facilities that would be financed include, but are not limited to, interactive video equipment, telecommunications terminal equipment, data terminal equipment, and telecommunications transmission equipment.

Supplemental Funds

REA proposes that the borrower supply supplemental funds of at least 20 percent of the total project costs for any project funded through the REA grant program, including the revolving loan program. Supplemental funds may comprise equity funds from the project owner, private sources, state and local government sources, other Federal Government sources, or other funds from the REA borrower, subject to requirements set forth in the existing regulation.

The requirement of supplemental funds for grants is consistent with a similar requirement for zero-interest loans. The amount of supplemental funds required to be provided by the project applicant is important for the success of the grant selection process. The applicant's contribution to the project evidences a degree of support and commitment which provides REA adequate assurance of viable projects that have a high probability of success. In addition, this requirement reduces REA capital requirements for each project, thus resulting in the ability to fund more projects using limited loan and grant funds. Further, the supplemental funds requirement serves to minimize project risk because organizations which incur a risk to provide supplemental funds financing will likely provide project review and oversight to protect their interests.

Other Provisions

There are several government-wide grant requirements which must be incorporated into this grant program. Several new sections are proposed which are based on government-wide grant regulations. These sections cover the disbursement of grant funds, reporting requirements for REA Borrowers, changes in the project, and grant termination. The government-wide grant regulations require an REA borrower receiving a grant to provide a number of reports on the status of the project. For example, the REA borrower would be required to file a quarterly financial status report and a projects performance activity report. A project performance report would contain a comparison of actual accomplishments to the objectives established for a period, reasons why any established objectives were not met, a description of any problems or delays that will prevent the project from meeting timetables, and the action taken or planned to resolve any problems.

In addition to incorporating the grant provisions into the existing regulation for zero-interest loans, additional changes are proposed for the zero-interest loan and grant regulation.

First, for zero-interest loans only, paragraph (d) of §1A1703.21 has been revised to require Borrowers to deposit zero-interest loan funds into their construction accounts. If loan funds are not expected to be disbursed within two months after receipt from REA, a borrower will be required to set up a separate federally insured account called the Rural Economic Development Account. For zero-interest loans, the requirement that interest accrued in excess of $500 per 12-month period be returned to REA or used for authorized purposes has been maintained. The $500 interest exemption for zero-interest loans has also been maintained to avoid placing additional administrative burdens on the borrower for funds that were only briefly deposited in an interest bearing account prior to

disbursing them. The provisions in this paragraph apply only to zero-interest loans, since USDA's Federal Uniform Assistance Regulation, 7 CFR part 3015, places more restrictions on handling of grant funds and requires all interest earned on grant funds to be returned to REA. The disbursement of grant funds is addressed in paragraph (b) of § 1703.61.

Second, paragraph (b) of § 1703.28 has been revised to eliminate the $400,000 limitation on the size of zero-interest loans and grants. Funding for individual loans and grants each fiscal year will be limited to not exceed 3 percent of the projected amount of zero-interest loan and grant funds available for that year. However, notwithstanding this change, the REA Administrator will retain the authority to limit funding below the 3 percent level, and a decision in this regard will be published in the Federal Register for each fiscal year. The provision setting a $200,000 floor for the maximum amount has been retained. Therefore, in those years where 3 percent of the projected amount of zero-interest loan and grant funds available for the year would be less than $200,000, the maximum amount of the loan and grant combination would still be maintained at $200,000. As published in the Federal Register on October 6, 1992, at 57 FR 46013, the REA Administrator has determined the maximum amount of a loan and grant to be $400,000 for fiscal year 1993.

Third, REA proposes to eliminate paragraph (e) of § 1703.46 in the existing rule. This paragraph requires projects providing recreational facilities to convincingly demonstrate that they would be an integral part of a tourism industry in their area. The rule also provides that projects that are intended to provide recreational facilities for the residents of particular areas would not receive points. After evaluating this requirement in light of REA policy set forth in § 1703.11 of the rule, and applications which have been received for funding under the zero-interest loan program, this provision is overly restrictive. Many recreational facilities promote economic development and job creation, and are based on sound economic and financial analysis, regardless of whether they are integrated with a tourism industry. The selection factors outlined in the rule are sufficient to evaluate the appropriateness of recreational facility projects in accordance with the goals of the zero-interest loan and grant program.

Fourth, paragraph (b) of § 1703.61 has been amended to clarify that the grant portion of the zero-interest loan and grant will be disbursed to the borrower only upon completion of the project. This will require REA Borrowers and project owners to initially use zero-interest loan funds and supplemental funding or to employ other financing as necessary to finance the project prior to requesting disbursement of grant funds by REA. This requirement is necessary to ensure that grant funds are handled so as to minimize the time between disbursement and authorized use in accordance with USDA's Federal Uniform Assistance Regulation, 7 CFR parts 3015 and 3016. At the same time this provides an REA regulation which minimizes the administrative burden upon REA Borrowers and REA for accounting and monitoring the disbursement of grant funds.

Fifth, to effectively monitor compliance with zero-interest loan and grant program provisions regarding supplemental funds, REA proposes to revise paragraph (b) of § 1703.66 to require recipients of pass-through loans and grants to furnish a record of receipts showing total project costs in such detail to allow verification that no greater than 80 percent of project costs have been funded with REA zero-interest loan and grant funds. This change is necessary to ensure zero-interest loan and grant program integrity.

Sixth, REA proposes to revise paragraph (e) of § 1703.66 in the rule to allow REA field accountants to provide a loan fund review of projects funded by zero-interest loans. The current language in the rule requires Borrowers receiving zero-interest loans to have a financial report and general accounting of all zero-interest loan funds prepared in accordance with the provisions of 7 CFR Part 1773, "REA Policy on Audits of Electric and Telephone Borrowers." The aforementioned rule requires formal audits to be performed which, in many cases, may cost thousands of dollars. While the provisions of 7 CFR part 1773 may be appropriate for large and complex electric and telephone loans, REA believes the requirement for formal audits outlined in this regulation are too cumbersome and costly for REA Borrowers receiving zero-interest loans which typically are $100,000, with the maximum of $400,000. Considering the fact REA Borrowers "pass-through" these rural economic development loans at zero-interest, REA believes excessive audit costs for Borrowers will provide an insurmountable obstacle for making loans under the zero-interest loan grant program. REA believes audits performed by REA field accountants will ensure that loan funds are properly used and the zero-interest loan and grant program is properly implemented. Therefore, in order to allow audits to be performed by REA personnel, REA proposes to revise paragraph (e) of § 1703.66, to allow borrowers receiving zero-interest loans to be subject to a rural economic development loan review of zero-interest loan funds, rather than a formal audit in accordance with 7 CFR part 1773. This provision applies to zero-interest loans only. Grant reporting requirements are addressed separately.

Seventh, REA proposes to revise paragraph (g) of § 1703.66 in the rule to clarify that for pass-through zero-interest loans and pass-through grants, REA borrowers must require project owners to provide sufficient financial, accounting and budget information, and other records deemed necessary to facilitate audits in accordance with 7 CFR part 3015 and 7 CFR part 3016, as appropriate. Likewise, paragraph (g) of § 1703.66 is revised to stipulate that REA borrowers receiving grants for establishment of revolving loan funds will be required to furnish information necessary to facilitate audits in accordance with USDA departmental grant regulations. Copies of these grant regulations are available to REA Borrowers by request.

List of Subjects in 7 CFR Part 1703

Community development, Grant programs-housing and community development, Loan programs-housing and community development, Reporting and recordkeeping requirements, Rural areas.

For the reasons set out in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1703—RURAL DEVELOPMENT

1. The authority citation for 7 CFR part 1703 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950 aaa *et seq.*

Subpart B—Rural Economic Development Loan and Grant Program

2. In § 1703.12 of this subpart B, the following definitions are added in alphabetical order to read as follows:

§ 1703.12 Definitions.

* * * * *

Revolving loan program—a program established and operated by the borrower, using grant funds, the borrower's contribution and loan repayments to make loans to businesses or others for rural economic development and job creation purposes.

* * * * *

RTB—the Rural Telephone Bank, established as a body corporate and an instrumentality of the United States, to obtain supplemental funds from non-Federal sources and utilize them in making loans, for the purposes of financing, or refinancing, the construction, improvement, expansion, acquisition, and operation of telephone lines, facilities, or systems, for REA borrowers financed under sections 201 and 408 of the Act.

* * * * *

Rural economic development—job creation or preservation or community facilities improvement projects in rural areas.

* * * * *

Scope of work—a detailed plan, which has been approved by the Administrator, covering the work to be performed by the loan and/or grant recipient using the loan and/or grant funds.

* * * * *

Technical assistance—managerial, analysis of facilities or processes, financial and operational consultation by independent qualified entities to assist project owners to identify and evaluate problems or potential problems and provide training to enable project owners to successfully implement, manage, operate and maintain viable projects.

* * * * *

3. Paragraph (c) of § 1703.17 is added to read as follows:

§ 1703.17 Uses of zero-interest loans and grants.

* * * * *

(c) Zero-interest loans and grants may be used for Projects that enhance rural economic development by providing advanced telecommunications services and computer networks for medical and educational services, as follows:

(1) For telecommunications end use and/or transmission facilities; and

(2) Other portions of the project, such as modifications to buildings necessary to accommodate telecommunications equipment for medical care and other services, public or private education, and employment training.

4. Sections 1703.18 and 1703.19 are added to read as follows:

§ 1703.18 Types of projects eligible for grant funding.

Grants may be made for the following purposes:

(a) The establishment and operation of a revolving loan program by borrowers in accordance with § 1703.22 of this subpart;

(b) Project feasibility studies to assist for-profit and non-profit entities in conjunction with a loan for an authorized project. Feasibility studies will include management assistance, consultation, and research for planning individual projects that the borrower has determined will benefit the rural community. Feasibility studies which may be financed under this section must be performed by qualified entities subject to § 1703.19(i), General requirements for grant funding. Feasibility studies must address the important aspects of project assessment and planning to ensure, to the extent practicable, the success of projects. These include the market, technical, economic, financial, and managerial issues related to project feasibility. Feasibility studies may be funded in connection with viable projects as a reimbursement to the project owner for expenses incurred during the initial planning stages of the project prior to project funding by REA;

(c) The acquisition of technical assistance in conjunction with projects funded with zero-interest loans to enable for-profit and non-profit entities to obtain managerial, analysis of facilities and processes, financial and operational consultation. Grant funds may also be used in conjunction with zero-interest loans to enable non-profit business incubators to provide technical assistance. Technical assistance will enable project owners to identify and evaluate problems or potential problems and provide training in order that they may ultimately implement, manage, operate and maintain viable projects which are financed with zero-interest loan funds. Technical assistance financed under this section must be performed by qualified entities which are independent of the project owner subject to § 1703.19(i), General requirements for grant funding;

(d) Business incubators established by non-profit organizations to assist in developing emerging enterprises. Business incubators funded in conjunction with zero-interest loans will include those facilities in which single or multiple businesses may use premises, support staff, computer software, hardware, telecommunications equipment, machinery, janitorial services, utilities, or other overhead facilities. Grant funding may also be provided to allow business incubators to provide feasibility studies and technical assistance in accordance with paragraphs (b) and (c) of this section;

(e) Community development assistance to non-profit entities and public bodies for employment creation projects, or other projects which provide needed community facilities and services;

(f) Facilities and equipment to public, for-profit and non-profit entities to provide education and training to rural residents to facilitate economic development. Equipment and facilities may be funded to enable rural businesses to provide educational and job enhancement skills to employees;

(g) Facilities and equipment to public, for-profit and non-profit entities to provide medical care to rural residents. Equipment and facilities may be funded to enable eligible entities to provide medical training and related professional health care skills to rural health care providers;

(h) Projects which utilize advanced telecommunications and/or a computer networks to facilitate medical or educational services or job training in accordance with paragraphs (f) and (g) of this section.

§ 1703.19 General requirements for grant funding.

(a) Grants made under § 1703.18(a), establishment and operation of a revolving loan program by borrowers, will be limited to borrowers and can be made without zero-interest loans. Grants made under § 1703.18(b) and (h) will be made only in conjunction with zero-interest loans, and on a pass-through basis.

(b) Pass-through grant funding for projects under § 1703.18(b), (c), (f), (g) and (h) will be available for non-profit and for-profit entities. Pass-through grant funding for projects under § 1703.18(d) and (e) will be available only for non-profit entities.

(c) All projects funded with zero-interest loans and grants will require supplemental funding in accordance with § 1703.23 of this subpart. For grants made under § 1703.18(a), the portion eligible for REA funding may be fully funded with grant funds. For all other grants funded under § 1703.18, the portion of project costs eligible for REA funding may be funded up to 20 percent with grant funds.

(d) Grant funding will be provided only to the extent necessary for a feasible project. A feasible project is a project which generates sufficient income to pay operating expenses and debts and compensate for depreciation of equipment and facilities for the project which is to be funded by REA. Depreciation must be based on allowable depreciation schedules as set forth by the United States Internal Revenue Service. Projects which generate sufficient revenue to show feasibility without grant funds are not eligible for grant funding. Borrowers requesting pass-through grant funds will base grant funding requests on

substantiated income and expense projections for the project, and documentation regarding depreciation of the equipment and facilities for the project. The Administrator will determine whether the borrower's projections of income, expenses and depreciation are reasonable.

(e) For those projects that initially project low income in the start-up phase compared with a typical year of operation, the deferral provisions set forth in § 1703.29(b) of this subpart will be considered prior to determining the level of eligible grant funding. Debt payment requirements will be calculated based on the debt repayment requirement at the expiration of the deferral and without the deferral option. Zero-interest loan and grant funding will be approved in accordance with paragraph (d) of this section based on the option which results in the lowest required grant percentage.

(f) The owner of the pass-through project that receives grant funds will be encouraged to commit that the project will be a demonstration project.

(g) Grant funds must be used to finance projects that will be viable.

(h) Borrowers or project owners must demonstrate the availability and commitment of other sources of funding needed to complete a project in addition to REA loan and/or grant funds, prior to the first advance of REA funds.

(i) Feasibility studies and/or technical assistance funded with grants under § 1703.18(b) and (c) of this subpart must be performed by entities which are independent of the borrower and qualified to provide such services. The project owner, if deemed qualified in accordance with this paragraph, may furnish a feasibility study under § 1703.18(b). Entities furnishing technical assistance under § 1703.18(c), must be independent of the project owner. To be deemed qualified, entities providing feasibility studies and/or technical assistance must:

(1) Provide sufficient documentation evidencing their proven ability, background and experience to furnish such services; and

(2) Provide sufficient documentation evidencing their legal authority and capacity to furnish such services.

5. Section 1703.20 is revised to read as follows:

§ 1703.20 Ineligible uses of zero-interest loans and grants.

(a) Zero-interest loans and grants must not be used:

(1) To fund or assist projects of which any director, officer, general manager or significant stockholder of the borrower, or close relative thereof, is an owner, stockholder, partner or director, or which would, in the judgment of the Administrator, create a conflict of interest or the appearance of a conflict of interest. The borrower must disclose to the Administrator information regarding any conflict of interest, potential conflict of interest or any appearance of a conflict of interest. The Administrator will determine whether there is a conflict of interest or whether any potential conflict of interest or appearance of a conflict of interest may adversely affect REA's interests. A borrower organized as, or consisting of a cooperative, widely held mutual corporation, tribal government, municipal power corporation, public power district, or a similar widely held organization would ordinarily be able to have an ownership interest in or manage a project operated on either a for-profit or non-profit basis. A borrower organized as a closely held, for-profit corporation with more than 5 percent of its stock held by one legal person, its subsidiary or an affiliate, would ordinarily be able to own or manage a project operated on a non-profit basis only;

(2) For any costs incurred on the project:

(i) Prior to receipt of the borrower's completed application by REA during an application period unless the Administrator has specifically approved such usage in writing; or

(ii) For site development, the destruction or alteration of buildings, or other activities that would adversely affect the environment or limit the choice of reasonable alternatives prior to satisfying the requirements of § 1703.32;

(3) By the borrower to purchase or lease any real property, materials, equipment, or services from its subsidiary, an affiliate, or significant stockholders, officers, managers or directors of the borrower, or close relatives thereof, where the purchase or lease has not been fully disclosed to the Administrator and received the Administrator's prior written approval;

(4) By the recipient of a pass-through-loan or pass-through-grant to purchase or lease any real property, materials, equipment, or services from the borrower, its subsidiary, an affiliate of the borrower, or significant stockholders, officers, managers or directors of the borrower, or close relatives thereof, where the purchase or lease has not been fully disclosed to the Administrator and received the Administrator's prior written approval;

(5) To pay off or refinance existing indebtedness incurred prior to receipt of the borrower's completed application by REA or for refinancing or repaying a loan made under the Act or a program administered by the Administrator;

(6) For any electric or telephone purpose, as determined by the Administrator;

(7) For the borrower's electric or telephone operations or for any operations affiliated with the borrower unless the Administrator has specifically informed the borrower in writing that the operations are part of the approved purposes;

(8) To pay the salaries of any employee or owner of the borrower, its subsidiaries, or affiliates. This restriction does not prohibit the use of loan or grant funds for printing and similar costs for project feasibility studies it has prepared, commissioned or purchased if specifically approved by the Administrator;

(9) To fund feasibility studies and technical assistance as set forth in § 1703.18 of this subpart independently of projects which are funded under the zero-interest loan and grant program;

(10) For proposed projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*); or

(11) For anything other than an approved purpose.

(b) [Reserved]

6. Section 1703.21 has been amended by adding a sentence at the end of paragraph (b) and revising paragraph (d) to read as follows:

§ 1703.21 Limitations on the use of zero-interest loan and grant funds.

* * * * *

(b) * * * Grant funds will be disbursed to the borrower in accordance with § 1703.61(b) of this subpart.

* * * * *

(d) The borrower may not requisition zero-interest loan funds unless those funds are deposited into the borrower's REA construction fund trustee account. The borrower will be required to set up a separate federally insured account called the Rural Economic Development Account, if loan funds are not expected to be disbursed within two months after receipt from REA. All interest earned on temporarily deposited zero-interest loan funds in excess of $500 per 12-month period must be used for approved purposes or returned to REA. Grant funds will be disbursed by REA in accordance with 7 CFR parts 3015 and 3016, and § 1703.61 (b) of this subpart.

* * * * *

7. Section 1703.22 is added to read as follows:

§ 1703.22 Revolving loan program.

Grant funds under this section will be provided only to REA borrowers on a

non pass-through basis. REA borrowers will, in turn, provide loans to foster rural economic development in accordance with this subpart and the specific requirements of this section.

(a) *General.* Grant funds disbursed to REA borrowers to establish revolving loan programs under this section are subject to the following requirements:

(1) The uses, restrictions and limitations for zero-interest loans set forth in §§ 1703.17, 1703.20 and 1703.21 of this subpart, respectively;

(2) Loans made by REA borrowers initially lending grant funds disbursed by REA are limited to types of projects specified in § 1703.18(d), (e), (f), (g) and (h). Loans may also be made for feasibility studies and technical assistance in accordance with § 1703.18(b) and (c), respectively, but only for those types of projects specified in this paragraph. Loans made from repayments of the initial loans made by REA borrowers may be used for any rural economic development purpose in accordance with a prior agreement between the borrower and REA;

(3) All other requirements relevant to zero-interest pass-through loans outlined in this subpart, except the minimum size of a zero-interest loan as specified in § 1703.28(f);

(4) The loans made from the revolving loan program using the grant funds must carry an interest rate of zero percent; however, the fund may charge reasonable loan servicing fees. Loans made from repayments of the initial loan may carry an interest rate in accordance with prior agreement with REA;

(5) Grant funds will only be provided to an REA borrower for a revolving loan program when a proposed budget submitted to REA demonstrates and the borrower agrees in writing that no more than 10 percent of grant funds received are used to cover operating expenses of the revolving loan program. Operating expenses include the costs of administering the revolving loan fund and the provision of technical assistance to project owners. All proceeds in excess of those needed to cover authorized expenses, as described above, must revert to the revolving fund and be available for re-lending for eligible projects. Budgets which reflect expenses incurred in operating the fund must be submitted to REA annually;

(6) The borrower may charge reasonable loan servicing charges. For purposes of this section, loan servicing charges must not exceed an amount equal to the sum of one percent per year of the outstanding principal on the first day of each year on each project owner's zero-interest loan which is made from the REA grant proceeds;

(7) The borrower will submit documentation indicating that potential projects which are eligible for funding have sufficiently progressed in the planning stage to allow grant funding approved for a revolving loan program to be requisitioned by the borrower, disbursed by REA, and loaned to recipients within three years of the date of grant approval by REA. Grant funds that have not been requisitioned within three years will be cancelled, unless the Administrator has approved an extension in writing. Grant funds will be disbursed by REA in accordance with paragraphs (d) and (g) of this section;

(8) If the revolving loan program is terminated, further disbursement of grant funds will be cancelled. Repayments of loans made using grant funds which have been disbursed will be used in accordance with the borrower's rural development plan;

(9) Payment of creditors which provide interim or construction financing to a viable project for eligible purposes as set forth in § 1703.17 of this subpart may be authorized. Refinancing for the sole purpose of replacing higher interest conventional financing with zero-interest revolving loan funds is not authorized.

(b) *The borrower's rural development plan.* REA requires that the revolving loan program be administered in accordance with a rural development plan, developed by the borrower and approved by REA. The plan must be of sufficient detail to provide REA with a complete understanding of what the borrower intends to accomplish by administering a revolving loan program. The rural development plan will provide the mechanics of how the revolving loan funds will be disbursed to the project owner. The rural development plan must outline the borrower's plans for administering the revolving loan program during the initial period when REA grant funds are lent by the borrower and after the revolving fund becomes non-Federal in accordance with paragraph (f) of this section. The plan must outline the following:

(1) Specific objectives for the revolving loan program, revolving loan operating procedures, lending parameters, maximum and minimum loan amount, and types of projects to be funded;

(2) Eligibility criteria if other than outlined in this subpart;

(3) The application process and method of disposition of the funds to the project owner; and

(4) A procedure for monitoring the project owner's accomplishments and reporting requirements by the project owner's management.

(c) *The borrower's scope of work.* Borrowers applying for grant funding under this section must submit a scope of work to REA. Applications for grants under this section will be evaluated for funding based on the borrower's rural development plan in paragraph (b) of this section and the scope of work. The scope of work must contain the following items:

(1) Documented need for grant funds. The borrower must identify a sufficient number of rural development projects of the type specified in § 1703.18(d), (e), (f), (g), and (h) which are currently being planned requiring zero-interest loans equal to the amount of grant assistance requested from REA. These projects may be supported with a community facilities plan, or other development plan, prepared by local community leaders in cooperation with the borrower. For each project, the borrower will submit information required under § 1703.34 of this subpart;

(2) Documented authority and ability of the borrower to administer a revolving rural development loan program in accordance with the provisions of this subpart. The borrower must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience;

(3) Documented ability of the borrower to commit financial resources under the control of the borrower to assist in the establishment of a rural development revolving loan program. This should include a statement of the sources of funding for the administration of the borrower's operations, as well as financial and technical assistance for projects;

(4) Documentation that the borrower has secured commitments of significant financial support from public agencies and/or private organizations for supplemental funding to support a rural development loan program;

(5) A list of proposed fees and other charges the borrower will assess the projects it funds; and

(6) The borrower's rural development policy for non-Federal funds in accordance with paragraphs (b) and (f) of this section.

(d) *Grant processing and approval.* Applications for grants to establish revolving loan funds will be reviewed in accordance with §§ 1703.45 and 1703.46 of this subpart, and with the borrower's rural development plan and scope of work outlined in this paragraphs (b) and (c) of this section. Grants will be

processed in accordance with §§ 1703.58 and 1703.59 of this subpart.

(e) *Disbursement of grant funds.* Borrowers are not authorized to commence projects to be funded under this section until those projects have been submitted for authorization in accordance with paragraph (c)(1) of this section, or the projects have been submitted for authorization subsequent to grant approval in accordance with paragraph (e)(2) of this section. REA grant funds will be disbursed in accordance with the provisions of 7 CFR Part 3015, Uniform Federal Assistance Regulations, on a reimbursement basis, the applicable requirements of this subpart, the administrative provisions outlined in paragraph (g) of this section, and the following requirements:

(1) Only projects authorized by REA in accordance with paragraphs (c)(1) and (e)(2) of this section, for which adequate documentation, including receipts for expenditures and certification of approved purposes, are submitted will be considered for reimbursement.

(2) A project which was not submitted prior to grant approval in accordance with paragraph (c)(1) of this section, may be authorized for funding subsequent to grant approval. A project which is authorized for funding under this paragraph will be considered for disbursement at the first allowable time period after project authorization in accordance with paragraphs (e)(3) and (e)(4) of this section. Project authorization after grant approval is subject to the following requirements:

(i) The project meets the specific objectives for the borrower's revolving loan program as outlined in paragraph (b)(1) of this section;

(ii) The borrower presents evidence that the project requested for authorization can be funded prior to projects which were authorized prior to grant approval in accordance with paragraph (b)(1) of this section; and

(iii) REA approves the project for funding in accordance with § 1703.34 of this subpart.

(3) Grant funds requisitioned for individual projects in increments of less than $100,000, or less than 25 percent of the amount approved for the revolving loan fund, whichever is less, may be reimbursed semi-annually. Submission periods for requisitioning grant funds on a semi-annual disbursement basis will be 14 days commencing from the 6-month anniversary date of grant approval.

(4) Grant funds requisitioned for individual projects in increments of $100,000 or greater, or at least 25 percent of the amount approved for the revolving loan fund, whichever is less, may be submitted for reimbursement at any time.

(f) *Reporting requirements.* (1) The borrower must maintain financial management systems and retain financial records in accordance with 7 CFR Part 3015, Uniform Federal Assistance Regulations.

(2) borrower records must include an accurate accounting and source documentation to support each transaction involving the revolving loan fund. Records are subject to a rural economic loan review as set forth in § 1703.66(g) of this subpart.

(3) SF-269, "Financial Status Report," and a revolving loan program activity report will be required of all borrowers on an annual basis. Reports will be submitted no later than 90 days after December 31 of each year. The program activity report will contain an aggregate list of projects funded, the amount funded for each project, the project repayment schedule, a brief description of each project, the project objectives, whether or not the project has been completed, and the projected number of jobs created or saved by each project. Reports under this paragraph will be required until all grant funds have been disbursed and projects completed.

(4) A performance report will be required for each project funded on an annual basis. Performance reports will be due no later than 90 days after December 31 of each year. Performance reports will be submitted until one year after project completion. Project performance reports will contain the following:

(i) A comparison of actual accomplishments during the reporting period to the objectives established for the project and, if not attained, reasons why established objectives were not met;

(ii) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated to resolve the situation;

(iii) Projected accomplishments for the next reporting period, if applicable; and

(iv) Status of compliance with any special conditions for project funding, if applicable.

(5) Borrowers must report and remit interest earned on advances of grant funds deposited in interest accounts to REA on a quarterly basis in accordance with 7 CFR Part 3015, Uniform Federal Assistance Regulations.

(g) *Non-Federal funds.* Once all REA-derived grant funds have been utilized by the borrower to fund rural development projects according to the provisions of this section and the applicable provisions of this subpart, loans made by the borrower thereafter from repayments to the revolving loan fund shall not be considered as being derived from Federal funds and the requirements of these regulations will not be imposed on the borrower or project owners. However, the borrower will, as a condition for receiving a grant under this section, agree to the following conditions:

(1) To maintain a revolving loan account to promote rural economic development in accordance with the borrower's rural development plan for non-Federal funds submitted in accordance with paragraph (b) of this section.

(2) To maintain the supplemental funding supplied by the borrower in accordance with § 1703.23 of this subpart within the revolving loan fund.

(3) Approval may be granted by the Administrator to terminate the revolving loan program, or modify the requirements set forth in paragraphs (g)(1) and (g)(2) of this section, upon written request and justification by the borrower.

(h) *Administrative provisions.* The requirements of this paragraph set forth the procedures for accounting, requisitioning and disbursement of Federal funds, those funds initially disbursed for projects which may be funded in accordance with an approved rural development plan and scope of work submitted by the borrower. Disbursement of grant funds will be approved on a reimbursement basis after the grant agreement is executed by REA and the borrower, the applicable provisions of this subpart are met, subject to disbursement restrictions in paragraph (e) of this section, and the following requirements.

(1) *Accounting requirements.* Accounting will be performed in accordance with 7 CFR Part 1767, Accounting Requirements for REA Electric Borrowers, or 7 CFR Part 1770, Accounting Requirements for REA Telephone Borrowers, as appropriate. The borrower will maintain accounts for the revolving funds as follows:

(i) REA electric borrowers.

(A) A general ledger Account 131.13, "Cash—General—Economic Development Grant Funds." The borrower will debit this account in an amount equal to the amount of the grant approved by REA, the borrower's

supplemental fund contribution required in accordance with § 1703.23 of this subpart, and all other funds advanced for the project, regardless of the source, if controlled by the borrower. The borrower will credit this account for all expenditures made with Federal funds on behalf of the rural development project.

(B) A general ledger Account 124.1, "Other Investments—Federal Economic Development Loans." The borrower will debit this account in the amount of Federal funds the borrower advances to nonassociated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.13 in paragraph (h)(1)(i)(A) of this section.

(C) A general ledger Account 123.3, "Investment in Associated Companies—Federal Economic Development Loans." The borrower will debit this account in the amount of Federal funds the borrower advances to associated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.13 in paragraph (h)(1)(i)(A) of this section.

(D) Account 421, "Miscellaneous Non-operating Income." The borrower will credit this account in the amount of grant funds disbursed by REA resulting from an approved requisition request in accordance with paragraph (h)(2) of this section.

(E) A general ledger Account 131.14, "Cash—General—Economic Development Non-Federal Revolving Funds." The borrower will debit this account with cash received from the repayment of loans made from accounts in paragraphs (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(i)(F), and (h)(1)(i)(G) of this section. The borrower will credit this account to reflect loans made for rural economic development projects from non-Federal funds from accounts specified in paragraphs (h)(1)(i)(F) and (h)(1)(i)(G) of this section.

(F) A general ledger Account 124.2, "Other Investments—Non-Federal Economic Development Loans." The borrower will debit this account in the amount of non-Federal funds the borrower advances to nonassociated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.14, in paragraph (h)(1)(i)(E) of this section.

(G) A general ledger Account 123.4, "Investment in Associated Companies—Non-Federal Economic Development Loans." The borrower will debit this account in the amount of non-Federal funds the borrower advances to associated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in Account 131.14, in paragraph (h)(1)(i)(E) of this section.

(ii) REA telephone borrowers.

(A) A general ledger Account 1130.4, "Cash—General—Economic Development Grant Funds (Class A Companies)", or Account 1120.14, "Cash—General—Economic Development Grant Funds (Class B Companies)." The borrower will debit the appropriate account in an amount equal to the amount of the grant approved by REA, the borrower's supplemental fund contribution required in accordance with § 1703.23 of this subpart, and all other funds advanced for the project, regardless of the source, if controlled by the borrower. The borrower will credit the appropriate account for all expenditures made with Federal funds on behalf of the rural development project.

(B) A general ledger Account 1402.4, "Other Investments in Nonaffiliated Companies—Federal Economic Development Loans." The borrower will debit this account in the amount of Federal funds the borrower advances to nonaffiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(A) of this section.

(C) A general ledger Account 1401.1, "Other Investments in Affiliated Companies—Federal Economic Development Loans." The borrower will debit this account in the amount of Federal funds the borrower advances to affiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(A) of this section.

(D) Account 7360, "Other Non-operating Income (Class A Companies)", or Account 7300, Non-operating Income and Expense (Class B Companies), as appropriate. The borrower will credit these accounts, as appropriate, in the amount of grant funds disbursed by REA resulting from an approved requisition request in accordance with paragraph (h)(2) of this section.

(E) A general ledger Account 1130.5, "Cash—General—Economic Development Non-Federal Revolving Funds (Class A Companies)", or Account 1120.15, "Cash—General—Economic Development Non-Federal Revolving Funds (Class B Companies)", as appropriate. The borrower will debit the appropriate account with cash received from the repayment of loans made from accounts in paragraphs (h)(1)(ii)(B), (h)(1)(ii)(C), (h)(1)(ii)(F), and (h)(1)(ii)(G) of this section. The borrower will credit the appropriate account to reflect loans made for rural economic development projects from non-Federal funds from accounts specified in paragraphs (h)(1)(ii)(F) and (h)(1)(ii)(G) of this section.

(F) A general ledger Account 1402.5, "Other Investments in Nonaffiliated Companies—Non-Federal Economic Development Loans." The borrower will debit this account in the amount of non-Federal funds the borrower advances to nonaffiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(E) of this section.

(G) A general ledger Account 1401.2, "Other Investments in Affiliated Companies—Non-Federal Economic Development Loans." The borrower will debit this account in the amount of non-Federal funds the borrower advances to affiliated organizations for authorized rural economic development projects. For each debit in this account, a corresponding credit will be made in the appropriate account in paragraph (h)(1)(ii)(E) of this section.

(2) *Requisition requirements.* Grant funds may be requisitioned by REA borrowers in accordance with disbursement requirements in paragraph (e) of this section. Borrowers will be reimbursed eighty percent (80%) of funds expended for approved projects funded, in accordance with supplemental funding requirements set forth in § 1703.23 of this subpart. For each completed project, the borrower will submit the following for reimbursement:

(i) Standard Form 270, "Request for Advance of Reimbursement";

(ii) Appropriate account ledgers completed in accordance with paragraph (h)(1) of this section, and certification of their accuracy;

(iii) Cancelled checks and other verifiable source records supporting the transactions; and

(iv) Certification and evidence that the project costs to be reimbursed are for a project which has been authorized by REA, and are authorized costs for that project.

(3) *REA review.* Requisition requests will be evaluated for compliance with loan purposes previously submitted by the borrower for project authorization in accordance with paragraphs (c)(1) or (e)(2) of this section, compliance with

the borrower's rural development plan, accounting documentation submitted in paragraph (h)(1) of this section, and the cancelled checks and source records submitted.

8. Paragraph (b) of § 1703.28 is revised to read as follows:

§ 1703.28 Maximum and minimum sizes of a zero-interest loan or grant application.

* * * * *

(b) Regardless of the projected total amount that will be available, the maximum size may not be lower than $200,000.

* * * * *

9. Section 1703.30 is amended by revising the parenthetical containing the OMB control number at the end of the section to read as follows:

§ 1703.30 Approval of agreements.

* * * * *

(Approved by the Office of Management and Budget under control number 0572090090)

10. Section 1703.34 is amended by revising paragraphs (b)(5) (ii) and (iii), and adding paragraphs (b)(5) (iv) and (v) to read as follows:

§ 1703.34 [Amended]

* * * * *

(b) * * *

(5) * * *

(ii) A section entitled "Project Description" as set forth in § 1703.36;

(iii) Except for applications for project feasibility studies, a section entitled "Environmental Impact of the Project" as set forth in § 1703.37;

(iv) Monitoring plan. For a pass-through loan and/or grant, a copy of the borrower's plan to monitor the loan and/or grant and ensure that the requirements of this subpart are met; and

(v) Scope of work. For an application for a loan and/or grant, a proposed scope of work for the project.

* * * * *

11. Section 1703.46 is amended by revising the first sentence of paragraph (a); by removing paragraph (e), and redesignating paragraphs (f), (g), (h), (i), (j), (k), and (l) as paragraphs (e), (f), (g), (h), (i), (j), and (k), respectively; and by adding a sentence at the end of newly designated paragraph (g)(6)(iv) to read as follows:

§ 1703.46 Documenting the evaluation and selection of applications for zero-interest loans and grants.

(a) The Administrator will only consider for selection applications that request funds for purposes as set forth in §§ 1703.17 and 1703.18 and are not ineligible under § 1703.20, as determined by the Administrator. * * *

* * * * *

(g) * * *

(6) * * *

(iv) * * * For a pass-through loan and grant, the quality of the borrower's plan to monitor the loan and grant and assure that the requirements of this subpart and 7 CFR parts 3015 and 3016 are met will also be considered.

* * * * *

12. Section 1703.61 is amended by adding two sentences at the end of paragraph (a) and three sentences at the end of paragraph (b) to read as follows:

§ 1703.61 Disbursement of zero-interest loan and grant funds.

(a) * * * The borrower or project owner's share in the cost of the project must be utilized in advance of REA zero-interest loan funds, or upon REA approval, on a pro rata distribution basis with loan funds during the disbursement period. The borrower or project owner will not be permitted to provide its contribution at the end of the loan disbursement period.

(b) * * * Prior to the disbursement of grant funds under this subpart, the borrower will provide evidence of fidelity bond coverage as required by § 3015.17 of this title. The grant portion of a pass-through zero-interest loan and grant will be disbursed to the borrower on a reimbursement basis after all other project funds have been utilized and evidence is provided that the project has been completed. Grants to borrowers for establishment of revolving loan funds will be disbursed in accordance with § 1703.22 of this subpart.

* * * * *

13. Section 1703.66 is amended by revising paragraphs (b), (d), (e) and (g), and by adding paragraphs (h), (i), and (j), to read as follows:

§ 1703.66 Review and other requirements.

* * * * *

(b) The borrower must require the recipient of a pass-through loan and grant to provide an itemized list to the borrower that shows the expenditures made on the project for approved purposes, including a certification to that effect. The borrower will also require the recipient to attach invoices, receipts, bills of sale, and other evidence representing the items on the list of expenditures that at least total the amount of the REA zero-interest loan and grant. In addition, the borrower will also require the recipient to furnish a record of itemized receipts showing total project costs in such detail that will permit auditors to establish the REA funding percentage. REA's legal agreements will include the terms and conditions that the borrower must require in its agreement with the recipient of a pass-through loan and grant covering the use and intended schedule of expenditures of the loan funds.

* * * * *

(d) The legal documents executed between the borrower and the Administrator in connection with a zero-interest loan and/or grant must contain certain provisions giving the Administrator discretionary rights and remedies in the event a borrower fails to comply with this subpart, other Federal regulations and statutes, or the terms, conditions and requirements of the executed legal documents. Regardless of any right or remedy the Administrator chooses to assert, if the borrower uses any zero-interest loan and/or grant funds other than for approved purposes, the borrower will be required to return to REA the amount used for unapproved purposes. An unauthorized zero-interest loan amount which is returned will be considered a prepayment on the REA note.

(e) Borrowers receiving zero-interest loans and/or grants will be subject to a rural economic development review of zero-interest loan and grant funds.

* * * * *

(g) Grants provided under this program will be administered in accordance with 7 CFR part 3015 and 7 CFR part 3016, as appropriate. Copies of these USDA Uniform Assistance regulations can be obtained by contacting REA in Washington, DC. The borrower that receives a grant for the establishment of a revolving loan fund, or project owner that receives a pass-through loan and grant, will be subject to requirements under these regulations which cover, among other things, financial reporting, accounting records, budget controls, record retention and audit requirements. For pass-through loans and grants, REA borrowers will be required to include in their legal documents the requirement for project owners to provide sufficient financial, accounting and budget information and other records deemed necessary to facilitate audits in accordance with 7 CFR part 3015 and 7 CFR part 3016 for non-profit entities, and REA loan fund and accounting reviews for projects in a for-profit status.

(h) For pass-through loans and grants awarded under this subpart, the borrower must diligently monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. The borrower must submit an original and one copy of each report to REA on an annual basis. The

project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why any established objectives were not met;

(3) A description of any problems, delays, or adverse conditions which have occurred, or are anticipated, and which may affect the attainment of overall project objectives, prevent meeting of time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(4) Objectives and timetable established for the next reporting period.

(i) For pass-through loans and grants, a final project performance report will be required with the last SF 269, "Financial Status Report," available from REA in Washington, DC The final report also must provide an evaluation of the success of the project in meeting the objectives of the program. The final report may serve as the last annual report.

(j) Monitoring requirements for borrowers receiving grants for revolving loan funds are specified in § 1703.22 of this subpart.

14. Sections 1703.67 and 1703.68 are added to read as follows:

§ 1703.67 Changes in project objective or scope.

For loans and grants awarded under this subpart, the borrower must obtain prior approval for any material change to the scope or objectives of the approved project, including changes to the scope of work or budget. Failure to obtain prior approval of changes can result in suspension or termination of grant funds.

§ 1703.68 Loan and grant termination provisions.

(a) *Termination for cause.* The Administrator may terminate any loan and/or grant in whole, or in part, at any time before the date of completion of loan and/or grant disbursement, whenever the borrower has failed to comply with the conditions of the loan and/or grant. The Administrator will promptly notify the borrower in writing of the determination and the reasons for the termination, together with the effective date. The termination date will be no less than 30 days following receipt of the termination notice. The borrower will have such time to cure the default, or to state why it feels the loan and/or grant should not be terminated. The Administrator will stay the termination upon the curing of the default, and may delay termination if, sufficient cause has been given by the borrower.

(b) *Termination for convenience.* The Administrator or the borrower may terminate a loan and/or grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with further expenditure of funds. The two parties will agree upon termination conditions, including the effective date, and in the case of partial terminations, the portion to be terminated. The borrower will not incur new obligations for the terminated portion after the effective date, and will cancel as many outstanding obligations as possible. The Administrator will allow full credit to the borrower for the Federal share of unfulfilled contractual obligations which were incurred in good faith by the borrower prior to grant termination.

§§ 1703.80—1703.99 [Reserved]

15. Sections 1703.80 through 1703.99, which are presently reserved in subpart B, are transferred to subpart C.

Dated: October 1, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc 93–24957 Filed 10–8–93; 8:45 am]

BILLING CODE 3410–15–F

FEDERAL ELECTION COMMISSION

11 CFR Parts 107, 114 and 9008

[Notice 1993–24]

Federal Funding of Presidential Nominating Conventions

AGENCY: Federal Election Commission.

ACTION: Notice of public hearing.

SUMMARY: The Federal Election Commission announces that it will hold a public hearing on proposed revisions to its regulations governing publicly financed Presidential nominating conventions. Further information is provided in the supplementary information which follows.

DATES: The hearing will be held on October 27, 1993 at 10 a.m. Requests to testify must be received on or before October 15, 1993. Persons requesting to testify must also submit written comments by October 15, 1993, if they have not previously filed written comments on the proposed rules.

ADDRESSES: Requests to testify, and any accompanying comments, must be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Ms. Susan E. Propper, Assistant General Counsel, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On August 12, 1993 (58 FR 43046) the Commission published a Notice of Proposed Rulemaking regarding possible changes to 11 CFR part 107, § 114.1 and part 9008, which concern the public financing of Presidential nominating conventions. These regulations implement the Federal Election Campaign Act of 1971, as amended, and the Presidential Election Campaign Fund Act. See 2 U.S.C. 437 and 26 U.S.C. 9008.

Five comments were received in response to the NPRM. One commentor, a national party committee, requested an opportunity to testify, if the Commission were to hold a public hearing on this rulemaking. Another national party committee has also indicated an interest in appearing. Accordingly, the Commission is scheduling a public hearing to give all those interested in the proposed changes to the regulations an opportunity to testify.

List of Subjects

11 CFR Part 107

Political committees and parties, Reporting requirements.

11 CFR Part 114

Business and industry, Elections.

11 CFR Part 9008

Campaign funds, Political committees and parties, Reporting requirements.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–24873 Filed 10–8–93; 8:45 am]

BILLING CODE 6715–01–M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB45

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), proposes to amend its regulations to allow Farm Credit System (FCS) institutions to document the existence of a first lien on the security for long-term real estate mortgage loans by obtaining title insurance instead of an attorney's certification. The current regulation requires that an attorney's certification be obtained for every long-term mortgage loan in order for that loan to qualify as collateral for FCS debt obligations. The regulation is being amended because title insurance has become the prevailing method used by the mortgage lending industry to ensure clear title. Additionally, the revised regulation permits FCS institutions greater flexibility in determining which method for validating first lien position (an attorney's certification or title insurance) provides the institution the best protection for the amount expended.

DATES: Written comments must be received on or before November 12, 1993.

ADDRESSES: Comments must be submitted in writing (in triplicate) to Patricia W. DiMuzio, Division Director, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Regulation Development Division, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Laurie A. Rea, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

James M. Morris, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Section 1.10(a)(2) of the Farm Credit Act of 1971, as amended (Act), requires that long-term mortgage loans made by Farm Credit Banks (FCBs) under section 1.7 of the Act, or by associations under sections 1.7 and 7.6 of the Act, "be secured by first liens on interests in real estate of such classes as may be prescribed by regulations of the Farm Credit Administration." At present, § 615.5060 requires that an attorney's certification be obtained for long-term mortgage loans if such loans are to qualify as collateral for FCS debt obligations. Nevertheless, title insurance is the prevailing method for ensuring clear title in the mortgage lending industry and is becoming more commonplace in FCS lending. Title insurance can provide a lender with protection that is comparable to an attorney's certification and in some instances may be more timely and less expensive to obtain. Despite these facts, under the present § 615.5060, even if FCS lenders obtain title insurance they must also obtain an attorney's certification, thus incurring unnecessary expenses without providing any substantial additional protection. FCA has reconsidered this requirement, and proposes to amend the regulation to permit institutions to obtain title insurance instead of an attorney's certificate to document the existence of a first lien, provided that the title insurance policy meets certain standards.

The FCA recognizes that practices within the mortgage lending industry continually change and proposes amending § 615.5060 to give FCS institutions additional flexibility while maintaining protection for them as well as for FCS investors and borrower-stockholders. The revised regulation allows FCS institutions to determine which method for validating first lien position (an attorney's certification or title insurance) provides them the best protection for the amount expended.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26 of the Farm Credit Act; 12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6; sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart B—Collateral

2. Section 615.5060 is amended by revising paragraph (a) to read as follows:

§ 615.5060 Special collateral requirement.

(a) If the counsel for a bank or association has determined, in writing, that bank or association procedures provide sufficient safeguards to ensure that a real estate mortgage loan, within the meaning of section 1.7(a) of the Act, made by the bank or association will be secured by a first lien, or its equivalent, on the borrower's interest in the primary real estate security, an attorney lien certification need not be obtained at the time a note is accepted as collateral. However, the note shall be withdrawn from collateral upon the expiration of 1 year from the date of the loan closing, unless, before the end of such period:

(1) An attorney has certified that the bank or association has a first lien or its equivalent from a security standpoint in the primary real estate security for the loan; or

(2) The bank or association obtained at loan closing a title insurance policy insuring that it has a first lien or its equivalent from a security standpoint in the primary real estate security for the loan, and all of the following requirements are satisfied:

(i) The final policy was issued by a title insurance company that has been licensed to issue such policies by the appropriate state insurance regulatory body or bodies, has not been barred or suspended, and has been approved by the lending institution;

(ii) The final policy was issued in a form that has been approved by the counsel for the lending institution;

(iii) The final policy was issued for an amount equal to the balance outstanding on the real estate mortgage loan; and

(iv) Personnel with adequate training and experience in real estate title matters designated by the counsel for the lending institution certified in writing that:

(A) They reviewed the final policy and that the policy complies with standards prescribed by such counsel; and

(B) The final policy insures that a first lien or its equivalent from a security standpoint has been obtained on the primary real estate security for the loan.

* * * * *

Dated: October 4, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–24881 Filed 10–8–93; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 115CE, Special Condition 23–ACE–74]

Special Conditions; Cessna Model 526 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Cessna Aircraft Company Model 526 airplanes. These airplanes will have novel and unusual features when compared to the state of technology envisaged in the applicable airworthiness standards. These design features include engine location, performance characteristics, and acrobatic maneuver capabilities, for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the current airworthiness standards.

DATES: Comments must be received on or before November 12, 1993.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 115CE Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 115CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Downs, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certificate Service, Federal Aviation Administration, 601 East 12th Street, Kansas city, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 115CE". The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

On January 18, 1993, the Cessna Aircraft Co., P.O. Box 7704, Wichita, KS 67277 made application for acrobatic category type certification of the Model 526 airplane. This airplane is a two place (tandem seating), all metal, low wing, twin turbofan engine-powered monoplane with fully enclosed retractable landing gear. The Model 526 has engines mounted on the fuselage sides aft and above the wing rear spar. The Model 526 is capable of acrobatic flight, including inverted maneuvers, and Mach .700 performance.

Type Certification Basis

Type certification basis of the Cessna Model 526 airplane is as follows: Federal Aviation Regulations (FAR Part 23), effective February 1, 1965, through amendment 23–42, effective February 4, 1991; FAR 36, effective December 1, 1969, through amendment effective on the date of type certification; exemptions, if any; and any special conditions that may result from this notice.

Discussion

Cessna plans to incorporate certain novel and unusual design features into the airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features include electronic systems, acrobatic flight capability, engine location, and certain performance characteristics necessary for this type of airplane that were not envisaged by the existing regulations.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis, as provided by § 21.17(a)(2).

Protection of Systems From High Intensity Radiated Fields(HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF incident on the external surface of aircraft. These induced transient currents and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation that was not envisioned when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

The combined effect of the technological advances in aircraft design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of aircraft. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems.

The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an

airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph (1) or, as an option to a fixed value using laboratory tests, in paragraph (2), as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment, defined below:

Field strength (volts/meter)		
Frequency	Peak	Average
10–100 KHz	50	50
100–500 KHz	60	60
500–2000 KHz	70	70
2–30 MHz	200	200
30–70 MHz	30	30
70–100 MHz	30	30
100–200 MHz	150	33
200–400 MHz	70	70
400–700 MHz	4020	935
700–1000 MHz	1700	170
1–2 GHz	5000	990
2–4 Ghz	6680	840
4–6 GHz	6850	310
6–8 GHz	3600	670
8–12 GHz	3500	1270
12–18 GHz	3500	360
18–40 GHz	2100	750

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions can withstand a peak of electromagnetic field strength of 100 volts per meter (v/m) in a frequency range of 10 KHz to 40 GHz. When using a laboratory test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

In view of the revised HIRF envelope, the requirement for the fixed value test has been changed to 100 v/m from the previously used value of 200 v/m. The applicant opting for the fixed value laboratory test, instead of the HIRF envelope, may be subject to post certification reassessment based on the finalized rule requirements. The applicant should be cautioned that choosing 100 v/m may make it difficult, under post certification reassessment requirements, to qualify the installations without upgrading the design. If the system should not meet the post certification reassessment requirements, additional protection provisions and/or testing may be required.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the aircraft. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements only apply to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal fight operations may be include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Thrust Attenuation

The Model 526 design includes a system that permits the attenuating of engine thrust. Attenuation is accomplished by movable panels, mounted on the engine pylons downstream of the exhaust cones, that can be deployed into the exhaust streams. The thrust attenuators are designed to be used in both ground and flight operations and differ from thrust reverses in that attenuators do not provide for either zero or reverse thrust levels. These special conditions provide requisite standards for thrust attenuating systems.

Flight

Previous certification and operational experience with jet powered airplanes has not included an airplane of similar design or approval in the acrobatic category.

Current standards in part 23 did not envisage this type of airplane and the associated performance and maneuvering capabilities. Based upon the knowledge and experience gained during certification and operation of previous part 23 jet airplanes and other acrobatic airplanes, special conditions similar to the requirements included in the draft Joint Airworthiness Regulations (JAR) 23, Issue 4 are proposed instead of the performance and flight characteristics requirements of subpart B of part 23.

Operating Limitations and Information

Current standards in part 23 did not envisage this type of airplane and the associated performance and maneuvering capabilities.

To maintain a level of safety consistent with other acrobatic category and jet powered airplanes, special conditions similar to the requirements included in the draft JAR 23, Issue 4 are proposed instead of the marketing, placards, and flight manual requirements of subpart G of part 23.

Effects of Contamination on Natural Laminar Flow Airfoils

Airfoil configurations similar to the Cessna Model 526 have been found to have measurable degradation of handling qualities and performance when laminar flow was lost due to airfoil contamination. Tripping of the boundary layer could be caused from flight in precipitation conditions or by the presence of contamination such as insects. If measurable effects are detected, it should be determined that the minimum flight characteristics standards continue to be met, and that any degradation to performance information are identified. This may be accomplished by a combination of analysis and testing. Current standards in part 23 did not envisage this type of airplane and the associated airfoil contamination considerations. Special conditions are proposed since existing regulations do not require these adverse effects to be evaluated.

Conclusion

In view of the design features and operational envelope discussed for the Model 526 airplane, the following special conditions are proposed. This action is not a rule of general applicability and affects only the model of airplane identified in these proposed special conditions.

List of Subjects in 14 CFR Part 23

Air transportation, Aircraft, Aviation safety, Safety.

Citation

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the Cessna Model 526 airplane:

Note: To provide for clarity and continuity within the proposed special conditions, some sections of subparts B and G of part 23 are included without change in the following special conditions. These unchanged sections are marked with an asterisk (*) preceding the section number to permit them to be readily identified from the different/added requirements of the proposed special conditions.

1. Protection of Systems From High Intensity Radiated Fields (HIRF)

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. Thrust Attenuating Systems

Thrust attenuating systems must be designed and installed so that no unsafe condition will result during normal operation of the systems, or from any failure (or reasonably likely combination of failures) of the thrust attenuation systems under any anticipated condition of operation of the airplane, including ground operation. Failure of structural elements need not be considered if the probability of this kind of failure is extremely remote.

3. *Flight*

Instead of compliance with the sections contained in Subpart B of part 23, the following sections apply:

General

**SC23.21 Proof of Compliance*

(a) Each requirement of this subpart must be met at each appropriate combination of weight and center of gravity within the range of loading conditions for which certification is requested. This must be shown—

(1) By tests upon an airplane of the type for which certification is requested, or by calculations based on, and equal in accuracy to, the results of testing; and

(2) By systematic investigation of each probable combination of weight and center of gravity, if compliance cannot be reasonably inferred upon combinations investigated.

(b) The following general tolerances are allowed during flight testing. However, greater tolerances may be allowed in particular tests—

Item	Tolerance
Weight	+5%,–10%.
Critical items affected by weight.	+5%,–1%.
CG	±7% total travel.

SC23.23 Load Distribution Limits

(a) Ranges of weight and center of gravity within which the airplane may be safely operated must be established. If a weight and center of gravity combination is allowable only within certain lateral load distribution limits that could be inadvertently exceeded, these limits must be established for the corresponding weight and center of gravity combinations.

(b) The load distribution must not exceed:

(1) The selected limits;

(2) The limits at which the structure is proven; or

(3) The limits at which compliance with each applicable flight requirement of this subpart is shown.

SC23.25 Weight Limits

(a) *Maximum weight.* The maximum weight is the highest weight at which compliance with each applicable requirement of FAR 23 (other than those complied with at the design landing weight) is shown. The maximum weight must be established so that it is—

(1) Not more than the least of—

(i) The highest weight selected by the applicant; or

(ii) The design maximum weight, which is the highest weight at which compliance with each applicable structural loading condition of FAR 23 (other than those complied with at the design landing weight) is shown; or

(iii) The highest weight at which compliance with each applicable flight requirement is shown, and,

(2) With each seat occupied, assuming a weight of 190 pounds, not less than the weight with—

(i) Oil at full tank capacity, and at least enough fuel for maximum continuous thrust operation of at least 45 minutes; or

(ii) The required minimum crew, and fuel and oil to full tank capacity.

(b) *Minimum weight.* The minimum weight (the lowest weight at which compliance with each applicable requirement of this part is shown) must be established so that it is not more than the sum of—

(1) The empty weight determined under SC23.29;

(2) The weight of the required minimum crew (assuming a weight of 170 pounds for each crew member); and

(3) The weight of 5 percent of the total fuel capacity of that particular fuel tank arrangement under investigation.

SC23.29 Empty Weight and Corresponding Center of Gravity

(a) The empty weight and corresponding center of gravity must be determined by weighing the airplane with—

(1) Fixed ballast;

(2) Unusable fuel determined under 23.959; and

(3) Full operating fluids, including—

(i) Oil;

(ii) Hydraulic fluid; and

(iii) Other fluids required for normal operation of airplane systems.

(b) The condition of the airplane at the time of determining empty weight must be one that is well defined and can be easily repeated.

SC23.31 Removable Ballast

Removable ballast may be used in showing compliance with the flight requirements of this subpart, if—

(a) The place for carrying ballast is properly designed and installed, and is marked under SC23.1557; and

(b) Instructions are included in the Airplane Flight Manual, approved manual material, or markings and placards, for the proper placement of the removable ballast under each loading condition for which removable ballast is necessary.

SC23.45 Performance—General

(a) The performance requirements of this subpart must be met for: Still air; and Ambient atmospheric conditions.

(b) Unless otherwise prescribed, performance data must be provided over not less than the following ranges of conditions:

(1) Airport altitude from sea level to 10,000 feet; and

(2) Temperature from standard to 30 °C above standard, or the maximum ambient atmospheric temperature at which compliance with the cooling provisions of 23.1041 to 23.1045 is shown, if lower.

(c) Performance data must be determined with the means for controlling the engine cooling air supply in the position used in the cooling tests required by 23.1041 to 23.1045.

(d) The available propulsive thrust must correspond to engine thrust not exceeding the approved thrust, less:

(1) Installation losses; and

(2) The equivalent thrust absorbed by the accessories and services appropriate to the particular ambient atmospheric conditions and the particular flight condition.

(e) The performance as affected by engine thrust must be based on a relative humidity of:

(1) 80 percent at and below standard temperature; and

(2) 34 percent at and above standard temperature plus 50 °F.

Between the two temperatures the relative humidity must vary linearly.

(f) Unless otherwise prescribed in determining the takeoff and landing distances, changes in the airplane's configuration, speed and thrust must be made in accordance with procedures established by the applicant for operation in service. The procedures must be able to be executed consistently by pilots of average skill in atmospheric conditions reasonably expected to be encountered in service.

(g) The takeoff and landing distances must be determined on a smooth dry hard-surfaced runway. The effect on these distances of operation on other types of surface (for example, grass, gravel) when dry, may be derived and these surfaces listed under SC23.1583(p).

SC23.49 Stalling Speed

(a) V_{SO} and V_{S1} are the stalling speeds or the minimum steady flight speed, in knots (CAS), at which the airplane is controllable with—

(1) The propulsive thrust may not be greater than zero at the stalling speed, or if the resultant thrust may not be greater than zero at the stalling speed, or, if the resultant thrust has not appreciable effect on the stalling speed, with engines idling and throttles closed;

(2) The airplane in the condition existing in the test in which V_{SO} and V_{S1} are being made;

(3) Center of gravity in the position which results in the highest value of V_{SO} and V_{S1}; and

(4) Weight used when V_{SO} or V_{S1} are being used as a factor to determine compliance with a required performance standard.

(b) V_{SO} and V_{S1} must be determined by flight tests using the procedure and meeting the flight characteristics specified in SC23.201.

SC23.51 Takeoff Speeds

(a) The rotation speed V_R, is the speed at which the pilot makes a control input with the intention of lifting the airplane out of contact with the runway. V_R must not be less than the greater of 1.05 V_{MC} and 1.10 V_{S1}.

(b) The speed at 50 feet must not be less than the highest of:

(1) A speed that is shown to be safe for continued flight (or land-back, if applicable) under all reasonably expected conditions, including turbulence and complete failure of the critical engine; or

(2) 1.10 V_{MC}; or

(3) 1.20 V_{S1}.

SC23.53 Takeoff Distance

(a) The takeoff distance must be determined in accordance with subparagraph (b), using speeds determined in accordance with SC23.51 (a) and (b).

(b) The distance required to takeoff and climb to a height of 50 feet above the takeoff surface must be determined for each weight, altitude and temperature within the operational limits established for takeoff with—

(1) Takeoff thrust on each engine;

(2) Wing flaps in the takeoff position(s); and

(3) Landing gear extended.

SC23.63 Climb: General

(a) Compliance with the requirements of SC23.65, SC23.66, SC23.67, SC23.69 and SC23.77 must be shown—

(1) Out of ground effect; and

(2) At speeds which are not less than those at which compliance with the powerplant cooling requirements of 23.1041 to 23.1045 has been demonstrated.

(b) Compliance must be shown, at weights, as a function of airport altitude and ambient temperature, within the operational limits established for takeoff and landing respectively, with—

(1) SC23.65 and SC23.67(a) and (b) for takeoff; and

(2) SC23.67(b) and SC 23.77 for landing.

SC23.65 Climb: All Engines Operating

The airplane must have a steady gradient of climb after takeoff of at least 4 percent with—

(a) Takeoff thrust on each engine;

(b) Landing gear extended except that, if the landing gear can be retracted in not more than 7 seconds, it may be assumed to be retracted;

(c) Wing flaps in the takeoff position(s); and

(d) A climb speed not less than the greater of 1.1 V_{MCA} and 1.2 V_{S1}.

SC23.66 Takeoff Climb: One-Engine-Inoperative

The steady gradient of climb or descent must be determined at each weight, altitude and ambient temperature within the operational limits established by the applicant with—

(a) Critical engine inoperative;

(b) Remaining engine at takeoff thrust;

(c) Landing gear extended except that, if the landing gear can be retracted in not more than 7 seconds, it may be assumed to be retracted;

(d) Wing flaps in the takeoff position(s);

(e) Wings level; and

(f) Climb speed equal to that achieved at 50 feet in the demonstration of SC23.53.

SC23.67 Climb: One-Engine Inoperative

(a) The steady gradient of climb at an altitude of 400 feet above the takeoff surface must be measurably positive with the—

(1) Critical engine inoperative;

(2) Remaining engine at takoff thrust;

(3) Landing gear retracted;

(4) Wing flaps in the takeoff position(s); and

(5) Climb speed equal to that achieved at 50 feet in the demonstration of SC23.53.

(b) the steady gradient of climb may not be less than 0.75 percent at an altitude of 1500 feet above the takeoff or landing surface, as appropriate, with the—

(1) Critical engine inoperative;

(2) Remaining engine at not more than maximum continuous thrust;

(3) Landing gear retracted;

(4) Wing flaps retracted; and

(5) Climb speed not less than 1.2 V_{s1}

SC23.69 En-route Climb/Descent

(A) *All engines operating.*

The steady gradient and rate of climb must be determined at each weight, altitude and ambient temperature within the operational limits established by the applicant with—

(1) Not more than maximum continuous thrust on each engine;

(2) Landing gear retracted;

(3) Wing flaps retracted; and

(4) Climb speed not less than 1.3 V_{s1}

(b) *One-engine inoperative.*

The steady gradient and rate of climb/descent must be determined at each weight, altitude and ambient temperature within the operational limits established by the applicant with—

(1) Critical engine inoperative;

(2) Remaining engine at not more than maximum continuous thrust;

(3) Landing gear retracted;

(4) Wing flaps retracted; and

(5) Climb speed not less than 1.2 V_{s1}

SC23.73 Reference Landing Approach Speed

The reference landing approach speed, V_{REF}, must not be less than the greater of V_{MC}, determined under SC23.149(c) with the wing flaps in the landing position, and 1.3 V_{SO}.

SC23.75 Land Distance

The horizontal distance necessary to land and come to a complete stop from a point 50 feet above the landing surface

must be determined, for standard temperatures at each weight and altitude with the operational limits established for landing, as follows:

(a) A steady approach at not less than V_{REF} must be maintained down to the 50-foot height and—

(1) The steady approach must be at a gradient of descent not greater than 5.2 percent (3 degrees) down to the 50-foot height; and

(2) In addition, an applicant may demonstrate by tests that a maximum steady approach gradient, steeper than 5.2 percent, down to the 50-foot height is safe. The gradient must be established as an operating limitation and the information necessary to display the gradient must be available to the pilot by an appropriate instrument.

(b) A constant configuration must be maintained throughout the maneuver.

(c) The landing must be made without excessive vertical acceleration or tendency to bounce, nose-over, ground loop, or porpoise.

(d) It must be shown that a safe transition to the landing conditions of SC23.77 can be made from the conditions that exist at the 50-foot height, at maximum landing weight or the maximum landing weight for altitude and temperature of SC23.63(b)(2), as appropriate.

(e) The brakes must not be used so as to cause excessive wear of brakes or tires.

(f) Retardation means other than wheel brakes may be used if that means—

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected in service; and

(3) If any device is used that depends on the operation of any engine, and the landing distance would be increased when a landing is made with that engine inoperative; the landing distance must be determined with that engine inoperative, unless the use of other compensating means will result in a landing distance not more than that with each engine operating.

SC23.77 Balked Landing

The steady gradient of climb must not be less than 2.5 percent with—

(a) Not more than the thrust that is available 8 seconds after initiation of movement of the thrust controls from the minimum flight idle position;

(b) The landing gear extended;

(c) The wing flaps in the landing position; and

(d) A climb speed equal to V_{REF}, as defined in SC23.73.

Flight Characteristics

SC23.141 General

The airplane must meet the requirements of SC23.143 through SC23.253 at all practical loading conditions and operating altitudes for which certification has been requested, not exceeding the maximum operating altitude established under SC23.1527 and without requiring exceptional piloting skill, alertness, or strength.

Controllability and Maneuverability

SC23.143 General

(a) The airplane must be safely controllable and maneuverable during all flight phases including—

(1) Takeoff;

(2) Climb;

(3) Level flight;

(4) Descent;

(5) Go-around; and

(6) Landing (power on and power off) with the wing flaps extended and retracted.

(b) It must be possible to make a smooth transition from one flight condition to another (including turns and slips) without danger of exceeding the limit load factor, under any probable operating condition, including those conditions normally encountered in the sudden failure of any engine.

(c) If marginal conditions exist with regard to required pilot strength, the control forces required must be determined by quantitative tests. In no case may the control forces under the conditions specified in paragraphs (a) and (b) exceed those prescribed in the following table:

Values in pounds force applied to the relevant control	Pitch	Roll	Yaw
For temporary application:			
Stick	60	30	.....
Rudder pedal	.....	.....	150
For prolonged application	10	5	20

SC23.145 Longitudinal Control

(a) With the airplane as nearly as possible in trim at 1.3 V_{S1}, it must be possible, at speeds below the trim-speed, to pitch the nose downward so that the rate of increase in airspeed allows prompt acceleration to the trim speed with—

(1) Maximum continuous thrust on each engine;

(2) Power off; and

(3) Wing flaps and landing gear—

(i) Retraced; and

(ii) Extended.

(b) It must be possible to carry out the following maneuvers without requiring the application of control forces exceeding those specified in SC23.143(c). The trimming controls must not be adjusted during the maneuvers:

(1) With landing gear extended and flaps retracted and the airplane as nearly as possible in trim at 1.4V_{S1}, extend the flaps as rapidly as possible and allow the airspeed to transition from 1.4V_{S1} to 1.4 V_{SO}, with—

(i) Power off; and

(ii) Thrust necessary to maintain level flight in the initial condition.

(2) With landing gear and flaps extended, power off and the airplane as nearly as possible in trim at 1.3 V_{SO}, quickly apply takeoff thrust and retract the flaps as rapdily as possible to the recommended balked landing setting and allow the airspeed to transition from 1.3 V_{SO} to 1.3 V_{S1}. Retract the gear when a positive rate of climb is established.

(3) With landing gear and flaps extended, thrust for and in level flight at 1.1 V_{SO} and the airplane as nearly as possible in trim, it must be possible to maintain approximately level flight while retracting the flaps as rapidly as possible with simultaneous application of not more than maximum continuous thrust. If gated flap positions are provided, the flap retraction may be demonstrated in stages with thrust and trim reset for level flight at 1.1 V_{S1} in the initial configuration for each stage—

(i) From the fully extended position to the most extended gated position;

(ii) Between intermediate gated positions, if applicable; and

(iii) From the least extended gated position to the fully retracted position.

(4) With power off, flaps and landing gear retracted and the airplane as nearly as possible in trim at 1.4 V_{S1}, apply takeoff thrust rapidly while maintaining the same airspeed.

(5) With power off, landing gear and flaps extended and the airplane as nearly as possible in trim at V_{REF}, obtain and maintain airspeeds between 1.1 V_{SO} and either 1.7 V_{SO} or V_{FE}, whichever is lower.

(6) With maximum takeoff thrust, landing gear retracted, flaps in the takeoff position(s) and the airplane as nearly as possible in trim at V_{FE} appropriate to the takeoff flap position, retract the flaps as rapidly as possible while maintaining speed constant.

(c) At speeds above V_{MO}/M_{MO} and up to the maximum speed shown under SC23.251, a maneuvering capability of 1.5g must be demonstrated to provide a margin to recover from upset or inadvertent speed increase.

(d) It must be possible, with a pilot control force of not more than 10 pounds, to maintain a speed of not more than V_{REF} during a power-off glide with landing gear and wing flaps extended.

(e) By using normal flight and thrust controls, except as otherwise noted in paragraphs (e)(1) and (e)(2) of this section, it must be possible to establish a zero rate of descent at an attitude suitable for a controlled landing with out exceeding the operational and structural limitations of the airplane, as follows:

(1) Without the use of the primary longitudinal control system;

(2) Without the use of the primary directional control; and

(3) If a single failure of any one connecting or transmitting link would affect both the longitudinal and directional primary control system, without the primary longitudinal and directional control system.

SC23.147 Directional and Lateral Control

(a) It must be possible, while holding the wings level within 5 degrees, to make sudden changes in heading safely in both directions. This must be shown at 1.4 V_{SI} with heading changes up to 15 degrees (except that the heading change at which the rudder force corresponds to the limits specified in SC23.143 need not be exceeded), with the—

(1) Critical engine inoperative;

(2) Remaining engine at maximum continuous thrust;

(3) Landing gear—

(i) Retracted; and

(ii) Extended.

(4) Flaps retracted.

(b) It must be possible to regain full control of the airplane without exceeding a bank angle of 45 degrees, reaching a dangerous attitude or encountering dangerous characteristics, in the event of a sudden and complete failure of the critical engine, making allowance for a delay of 2 seconds in the initiation of recovery action appropriate to the situation, with the airplane initially in trim, in the following conditions—

(1) Maximum continuous thrust on each engine;

(2) Wing flaps retracted;

(3) Landing gear retracted; and

(4) Speed equal to that at which compliance with SC23.69(a) has been shown.

(c) It must be shown that the airplane is safely controllable without the use of the primary lateral control system in any configuration and at any speed or altitude within the approved operating envelope and that the airplane's flight characteristics are not impaired below a level needed to permit continued safe flight and the ability to maintain attitudes suitable for a controlled landing without exceeding the operational and structural limitations of the airplane. If a single failure of any one connecting or transmitting link in the lateral control system would also cause the loss of additional control system(s), the above requirement is equally applicable with those additional systems also assumed to be inoperative.

SC23.149 Minimum Control Speed

(a) V_{MC} is the calibrated airspeed at which, when the critical engine is suddenly made inoperative, it is possible to recover control of the airplane, with that engine still inoperative, and thereafter maintain straight flight at the same speed with an angle of bank not more than 5 degrees. The method used to simulate critical engine failure must represent the most critical mode of powerplant failure with respect to controllability expected in service.

(b) V_{MC} for takeoff must not exceed 1.2 V_{SI}, (where V_{SI} is determined at the maximum takeoff weight) and must be determined with the most unfavorable weight and center of gravity position and with the airplane airborne and the ground effect negligible, for the takeoff configuration(s) with—

(1) Maximum available takeoff thrust initially on each engine;

(2) The airplane trimmed for takeoff;

(3) Flaps in the takeoff position(s); and

(4) Landing gear retracted.

(c) The V_{MC} requirements of (a) must also be met for the landing configuration with—

(1) Maximum available takeoff thrust initially on each engine;

(2) The airplane trimmed for an approach with all engines operating at V_{REF} at an approach gradient equal to the steepest used in the landing distance demonstration of SC23.75;

(3) Flaps in the landing position; and

(4) Landing gear extended.

(d) At V_{MC} the rudder pedal force required to maintain control must not exceed 150 pounds and it must not be necessary to reduce thrust of the operative engine. During recovery, the airplane must not assume any dangerous attitude and it must be possible to prevent a heading change of more than 20 degrees.

(e) A minimum speed to intentionally render the critical engine inoperative must be established and designated as the safe, intentional, one-engine-inoperative speed, V_{SEE}.

SC23.151 Acrobatic Maneuvers

(a) The airplane must be able to perform safely the acrobatic maneuvers for which certification is requested. Safe entry speeds for these maneuvers must be determined.

(b) It must be possible to safely recover control of the airplane following inadvertent upsets encountered during the acrobatic maneuvers for which certification is requested.

(c) The airplane must meet the emergency egress requirements of 23.807(b)(5).

(d) The airplane must meet the following spin requirements:

(1) One-turn spins. The airplane must recover from a one-turn spin or a three second spin, whichever takes longer, in not more than one additional turn, after initiation of the first control action for recovery. In addition—

(i) For both the flaps retracted and flaps extended conditions, the applicable airspeed limit and positive limit maneuvering load factor must not be exceeded;

(ii) No control forces or characteristics encountered during the spin or recovery may adversely affect prompt recovery.

(iii) It must be impossible to obtain unrecoverable spins with any use of the flight or engine power controls either at the entry into or during the spin; and

(iv) For the flaps extended condition, the flaps may be retracted during the recovery, but not before rotation has ceased.

(2) Six-turn (or greater) spins: The following requirements must be met in each configuration for which approval for spinning is requested:

(i) The airplane must readily recover from any point in a spin up to and including six turns, or any greater number of turns for which certification is requested, in not more than one and one half additional turns after initiation of the first control action for recovery. However, beyond three turns, the spin may be discontinued if spiral characteristics appear;

(ii) The applicable airspeed limits and limit maneuvering load factors must not be exceeded. For flaps extended configurations for which approval is requested, the flaps must not be retracted during the recovery.

(iii) It must be impossible to obtain unrecoverable spins with any use of the flight or engine power controls either at the entry into or during the spin; and

(iv) There must be no characteristics during the spin (such as excessive rates of rotation or extreme oscillatory motion) which might prevent a successful recovery due to disorientation or incapacitation of the pilot.

SC23.153 Control During Landings

It must be possible, while in the landing configuration, to safety complete a landing without exceeding the control force limits specified in SC23.143(c) following an approach to land—

(a) At a speed of $V5_{REF}$-5 kts;

(b) With the airplane in trim, or as nearly as possible in trim and without the trimming control being moved throughout the maneuver;

(c) At an approach gradient equal to the steepest used in the landing distance demonstration of SC23.75; and

(d) With only those thrust changes, if any, which would be made when landing normally from an approach at V_{REF}.

SC23.155 Elevator control force in Maneuvers

(a) The elevator control force needed to achieve the positive limit maneuvering load factor may not be less than W/140 (where W is the maximum weight) or 15 pounds, whichever is greater, except that it need not be greater than 35 pounds.

(b) The requirement of paragraph (a) of this section must be met at maximum continuous thrust with the wing flaps and landing gear retracted—

(1) In a turn, with the trim setting used for wings level flight at V_o; and

(2) In a turn, with the trim setting used for the maximum wings level flight speed, except that the speed need not exceed V_{MO}/M_{MO}.

(c) There must be no excessive decrease in the gradient of the curve of stick force versus maneuvering load factor with increasing load factor.

SC23.157 Rate of roll

(a) Takeoff. It must be possible, using a favorable combination of controls, to roll the airplane from a steady 30 degree banked turn through an angle of 60 degrees, so as to reverse the direction of the turn within W+500+1300 seconds, where W is the weight in pounds.

(b) The requirement of paragraph (a) of this section must be met when rolling the airplane in each direction with—

(1) Flaps in the take-off position(s);

(2) Landing gear retracted;

(3) With the critical engine inoperative and the remaining engine at maximum takeoff thrust; and

(4) The airplane trimmed at a speed equal to the greater of 1.2 V_{SI} or 1.1 V_{MC} or as nearly as possible in trim for straight flight.

(c) Approach. It must be possible using a favorable combination of controls, to roll the airplane from a steady 30 degree banked turn through an angle of 60 degrees, so as to reverse the direction of the turn with W+2800÷2200 seconds, where W is the weight in pounds.

(d) The requirement of paragraph (c) of this section must be met when rolling the airplane in each direction in the following conditions—

(1) Flaps in the landing position(s);

(2) Landing gear extended;

(3) All engines operating at the thrust for a 3 degree approach; and

(4) The airplane trimmed at V_{REF}.

Trim

SC23.161 Trim

(a) General. Each airplane must meet the trim requirements of this section after being trimmed and without further pressue upon, or movement of, the primary controls or their corresponding trim controls by the pilot or the automatic pilot. In addition, it must be possible, in other conditions of landing, configuration, speed and thrust to ensure that the pilot will not be unduly fatigued or distracted by the need to apply residual control forces exceeding those for prolonged application specified in SC23.143.(c). This applies in normal operation of the airplane and, if applicable, to those conditions associated with the failure of one engine for which performance characteristics are established.

(b) Lateral and directional trim. The airplane must maintain lateral and directional trim in level flight at 0.9 V_H, V_C or V_{MO}/M_{MO}, whichever is lowest, with the landing gear and wing flaps retracted.

(c) Longitudinal trim. The airplane must maintain longitudinal trim under each of the following conditions:

(1) A climb with:

(i) Takeoff thrust, landing gear retracted, wing flaps in the takeoff position(s), at the speeds used in determining the climb performance required by SC23.65; and

(ii) Maximum continuous thrust at the speeds in the configuration used in determining the climb performance required by SC23.69(a).

(2) Level flight at all speeds from the lesser of V_H and V_{MO}/M_{MO} (as appropriate), to 1.4 V_{SI}, with the landing gear and flaps retracted.

(3) A descent at V_{MO}/M_{MO} with power off and with the landing gear and flaps retracted.

(4) Approach with landing gear extended and with—

(i) A 3 degree angle of descent, with flaps retracted and at a speed of 1.4 V_{SI};

(ii) A 3 degree angle of descent, flaps in the landing position(s) at V_{REF}; and

(iii) An approach gradient equal to the steepest used in the landing distance demonstrations of SC23.75, flaps in the landing position(s) at V_{REF}.

(d) The airplane must maintain longitudinal and directional trim and the lateral control force must not exceed 5 pounds, at the speed used in complying with SC23.67(b) with—

(1) The critical engine inoperative;

(3) The landing gear retracted;

(4) The wing flaps retracted; and

(5) An angle of bank of not more than 5 degrees.

Stability

**SC23.171 General*

The airplane must be longitudinally, directionally and laterally stable under SC23.173 through SC23.181. In addition, the airplane must show suitable stability and control "feel" (static stability) in any condition normally encountered in service, if flight tests show it is necessary for safe operation.

SC23.173 Static longitudinal stability

Under the conditions specified in SC23.175 and with the airplane trimmed as indicated, the characteristics of the elevator control forces and the friction within the control system must be as follows:

(a) A pull must be required to obtain and maintain speeds below the specified trim speed and a push required to obtain and maintain speeds above the specified trim speed. This must be shown at any speed that can be obtained, except that speeds requiring a control force in excess of 40 pounds or speeds above the maximum allowable speed or below the minimum speed for steady unstalled flight, need not be considered.

(b) The airpeed must return to within plus or minus 10 percent of the original trim speed when the control force is slowly released at any speed within the speed range specified in paragraph (a) of this section.

(c) The stick force must vary with speed so that any substantial speed change results in a stick force clearly perceptible to the pilot.

SC23.175 Demonstraton of Static Longitudinal Stability

Static longitudinal stability must be shown as follows:

(a) Climb. The stock force curve must have a stable slope, at speeds between 85 percent and 115 percent of the trim speed, with—

(1) Flaps retracted;

(2) Landing gear retracted;

(3) Maximum continuous thrust; and

(4) The airplane trimmed at the speed used in determining the climb performance required by SC23.69(a).

(b) Cruise. With flaps and landing gear retracted and the airplane in trim with thrust for level flight at representative cruising speeds at high and low altitudes, including speeds up to V_{MO}/M_{MO}, as appropriate, except that the speed need not exceed V_H.

(1) The stick force curve must have a stable slope at all speeds within a range that is the greater of 15 percent of the trim speed plus the resulting free return speed range, or 40 knots plus the resulting free return speed range, above and below the trim speed, except that the slope need not be stable—

(i) At speeds less than 1.3 V_{S1}; and

(ii) At speeds greater than V_{FC}/M_{FC}.

(c) Landing. The stick force curve must have a stable slope at speeds between 1.1 V_{S1} and 1.8 V_{S1} with—

(1) Flaps in the landing position(s);

(2) Landing gear extended; and

(3) The airplane trimmed at—

(i) V_{REF}, or the minimum trim speed if higher, with power off; and

(ii) V_{REF} with enough thrust to maintain a 3 degree angle of descent.

SC23.177 Static Directional and Lateral Stability

(a) The static directional stability, as shown by the tendency to recover from a skid with the rudder free, must be positive for any landing gear and flap position appropriate to the takeoff, climb, cruise, approach and landing configurations. This must be shown with symmetrical thrust up to maximum continuous thrust and at speeds from 1.2 V_{s1} up to maximum allowable speed for the condition being investigated. The angle of sideslip for these tests must be appropriate to the type of airplane. At larger angles of sideslip up to that at which full rudder is used or a control force limit in § SC23.143 is reached, whichever occurs first, and at speeds from 1.2 V_{s1} to V_o the rubber pedal force must not reverse.

(b) The static lateral stability, as shown by the tendency to raise the low wing in a sideslip, must be positive for all landing gear and flap positions. This must be shown with symmetrical power up to 75 percent maximum continuous thrust at speeds above 1.2 V_{s1} in the takeoff configuration(s) and at speeds above 1.3 V_{s1} in other configurations, up to the maximum allowable speed for the configuration being investigated, in the takeoff, climb, cruise, and approach configurations. For the landing configuration, the power must be up to that necessary to maintain a 3 degree angle of descent in coordinated flight. The static lateral stability must not be negative at 1.2 V_{s1} in the takeoff configuration(s), or at 1.3 V_{s1} in other configurations. The angle of sideslip for these tests must be appropriate to the type of airplane but in no case may the constant heading sideslip angle to be less than that obtainable with a 10 degree bank, or if less, the maximum bank angle obtainable with full rudder deflection or 150 pound rudder force.

(c) Paragraph (b) of this section does not apply to acrobatic category airplanes certificated for unlimited inverted flight.

(d) In straight, steady sideslips at 1.2 V_{s1} for any landing gear and flap positions and for any symmetrical thrust conditions up to 50 percent of maximum continuous thrust, the aileron and rudder control movements and forces must increase steadily (but not necessarily in constant proportion) as the angle of sideslip is increased up to the maximum appropriate to the type of airplane. At larger sidelslip angles up to the angle at which full rudder or aileron control is used or a control force limit contained in SC23.143 is obtained, the aileron and rudder control movements and forces must not reverse as the angle of sideslip is increased. Rapid entry into, or recovery from, a maximum sideslip considered appropriate for the airplane must not result in uncontrollable flight characteristics.

SC23.18 Dynamic Stability

(a) Any short period oscillation not including combined lateral-directional oscillations occurring between the stalling speed and the maximum allowable speed appropriate to the configuration of the airplane must be heavily damped with the primary control—

(1) free; and

(2) in a fixed position.

(b) Any combined lateral-directional oscillations ("Dutch roll") occurring between the stalling speed and the maximum allowable speed appropriate to the configuration of the airplane must be damped to 1/10 amplitude in 7 cycles with the primary controls—

(1) free; and

(2) in a fixed position.

(c) It if is determined that the function of a stability augmentation system, reference 23.672, is needed to meet the flight characteristic requirements of this part, the primary control requirements of paragraphs (a)(2) and (b)(2) of this section are not applicable to the tests needed to verify the acceptability of that system.

(d) During the conditions as specified in SC23.175, when the longitudinal control force required to maintain speeds differing from the trim speed by at least plus and minus 15 percent is suddenly released, the response of the airplane must not exhibit any dangerous characteristics nor be excessive in relation to the magnitude of the control force released. Any long-period oscillation of flight path, phugoid oscillation, that results must not be so unstable as to increase the pilot's workload or otherwise endanger the airplane.

Stalls

SC23.201 Wings Level Stall

(a) It must be possible to produce and to correct roll by unreversed use of the rolling control and to produce and to correct yaw by unreversed use of the directional control, up to the time the airplane stalls.

(b) The wings level stall characteristics must be demonstrated in flight as follows. Starting from a speed at least 10 knots above the stall speed, the elevator control must be pulled back so that the rate of speed reduction will not exceed one knot per second until a stall is produced, as shown by either:

(1) an uncontrollable downward pitching motion of the airplane; or

(2) the control reaching the stop.

(c) Normal use of elevator control for recovery is allowed after the downward pitching motion of paragraph (b)(1) of this special condition has unmistakably been produced, or after the control has been held against the stop for not less than the longer of two seconds or the time employed in the minimum steady flight speed determination of SC23.49.

(d) During the entry into and the recovery from the maneuver, it must be possible to prevent more than 15 degrees of roll or yaw by the normal use of controls.

(e) Compliance with the requirements of this section must be shown under the following conditions:

(1) Wing flaps: Retracted, fully extended and each intermediate operating position;

(2) Landing gear: Retracted and extended;

(3) Power: Power off and 75 percent maximum continuous thrust. If the thrust-to-weight ratio at 75 percent maximum continuous thrust results in extremely nose-high attitudes, the test may be accomplished with the power required for level flight in the landing configuration at maximum landing weight and a speed of 1.4 V_{SO}, but the power may not be less that 50 percent of maximum continuous thrust.

(4) Trim: The airplane trimmed at a speed as near 1.5 V_{S1} as practicable.

SC23.203 Turning Flight and Accelerated Turning Stalls

Turning flight and accelerated turning stalls must be demonstrated in tests as follows:

(a) Establish and maintain a coordinated turn in a 30 degree bank. Reduce speed by steadily and progressively tightening the turn with the elevator until the airplane is stalled, as defined in SC23.201(b). The rate of speed reduction must be constant, and—

(1) For a turning flight stall, may not exceed one knot per second; and

(2) For an accelerated turning stall, be 3 to 5 knots per second with steadily increasing normal acceleration.

(b) After the airplane has stalled, as defined in SC23.201(b) it must be possible to regain wings level flight by normal use of the flight controls but without increasing thrust and without—

(1) Excessive loss of altitude;

(2) Undue pitch up;

(3) Uncontrollable tendency to spin;

(4) Exceeding a bank angle of 60 degrees in the original direction of the turn or 30 degrees in the opposite direction in the case of turning flight stalls;

(5) Exceeding a bank angle of 90 degrees in the original direction of the turn or 60 degrees in the opposite direction in the case of accelerated turning stalls; and

(6) Exceeding the maximum permissible speed or allowable limit load factor.

(c) Compliance with the requirements of this section must be shown under the following conditions:

(1) Wing flaps: Retracted, fully extended and each intermediate operating position;

(2) Landing gear: Retracted and extended;

(3) Power: Power off and 75 percent maximum continuous thrust. If the thrust-to-weight ratio at 75 percent maximum continuous thrust results in extremely nose-high attitudes, the test may be accomplished with the power required for level flight in the landing configuration at maximum landing weight and a speed of 1.4 V_{SO}, but the power may not be less that 50 percent of maximum continuous thrust;

(4) Trim: The airplane trimmed at a speed as near 1.5 V_{S1} as practicable.

SC23.207 Stall Warning

(a) There must be a clear and distinctive stall warning, with the flaps and landing gear in any normal position, in straight and turning flight.

(b) The stall warning may be furnished either through the inherent aerodynamic qualities of the airplane or by a device that will give clearly distinguishable indications under expected conditions of flight. However, a visual stall warning device that requires the attention of the crew within the cockpit is not acceptable by itself.

(c) During the stall tests required by SC23.201(b) and SC23.203(a)(l), the stall warning must begin at a speed exceeding the stalling speed by a margin of not less than 5 knots and must continue until the stall occurs.

(d) When following the procedures of SC23.1585, the stall warning must not occur during a takeoff with all engines operating, a takeoff continued with one engine inoperative or during an approach to landing.

(e) During the stall tests required by SC23.203(a)(2), the stall warning must begin sufficiently in advance of the stall for the stall to be averted by pilot action taken after the stall warning first occurs.

(f) An artificial stall warning may be mutable, provided that it is armed automatically during takeoff and re-armed automatically in the approach configuration.

Ground Handling Characteristics

SC23.231 Longitudinal Stability and Control

The airplane may have no uncontrollable tendency to nose over in any reasonably expected operating condition, including rebound during landing or take-off. Wheel brakes must operate smoothly and may not induce any undue tendency to nose over.

SC23.233 Directional Stability and Control

(a) A 90 degree cross-component of wind velocity, demonstrated to be safe for taxiing, takeoff and landing must be established and must be not less than 0.2 V_{SO}.

(b) The airplane must be satisfactorily controllable in power-off landings at normal landing speed, without using brakes or engine thrust to maintain a straight path until the speed has decreased to at least 50 percent of the speed at touchdown.

(c) The airplane must have adequate directional control during taxiing.

SC23.235 Operation on Unpaved Surfaces

The airplane must be demonstrated to have satisfactory characteristics and the shock-absorbing mechanism must not damage the structure of the airplane when the airplane is taxied on the roughest ground that may reasonably be expected in normal operation and when takeoffs and landings are performed on unpaved runways having the roughest surface that may reasonably be expected in normal operation.

Miscellaneous Flight Requirements

SC23.251 Vibration and Buffeting

There must be no vibration or buffeting severe enough to result in structural damage and each part of the airplane must be free from excessive vibration, under any appropriate speed and power conditions up to V_D/M_D. In addition there must be no buffeting in any normal flight condition severe enough to interfere with the satisfactory control of the airplane or cause excessive fatigue to the flight crew. Stall warning buffeting within these limits is allowable.

SC23.253 High Speed Characteristics

The following speed increase and recovery characteristics must be met—

(a) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely speed up to V_{MO}/M_{MO}. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradient in relation to control friction, leveling off from climb and descent from Mach limit to airspeed limit altitude.

(b) Allowing for pilot reaction time after occurrence of the effective inherent or artificial speed warning specified in 23.1303, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to V_{MO}/M_{MO} without—

(1) Exceptional piloting strength or skill;

(2) Exceeding V_D/M_D, the maximum speed shown under SC23.251, or the structural limitations; or

(3) Buffeting that would impair the pilot's ability to read the instruments or to control the airplane for recovery.

(c) There may be no control reversal about any axis at any speed up to the maximum speed shown under SC23.251. Any reversal of elevator control force or tendency of the airplane to pitch, roll, or yaw must be mild and readily controllable, using normal piloting techniques.

4. Operating Procedures and Information

Instead of compliance with the sections contained in subpart G of part 23, the following sections apply:

**SC23.1501 General*

(a) Each operating limitation specified in SC23.1505 through SC23.1527 and other limitations and information necessary for safe operation must be established.

(b) The operating limitations and other information necessary for safe

operation must be made available to the crew members as prescribed in SC23.1541 through SC23.1589.

SC23.1505 Airspeed Limitations

The maximum operating limit speed (V_{MO}/M_{MO} airspeed or Mach number, whichever is critical at a particular altitude) must be established as a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent) unless a higher speed is authorized for flight test or pilot training operations. V_{MO}/M_{MO} must be established so that it is not greater than the design cruising speed V_C/M_C and so that it is sufficiently below V_D/M_D and the maximum speed shown under SC23.251 to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between V_{MO}/M_{MO} and V_D/M_D or the maximum speed shown under SC23.251 may not be less than the speed margin established between V_C/M_C and V_D/M_D under 23.335(b), or the speed margin found necessary in the flight tests conducted under SC23.253.

SC23.1507 Operating Maneuvering Speed

The maximum operating maneuvering speed V_O must be established as an operating limitation, where V_O must not be greater than the $V_S\sqrt{n}$ established in 23.335(c).

SC23.1511 Flap Extended Speed

(a) The flap extended speed V_{FE} must be established so that it is—

(1) Not less than the minimum value of V_F allowed in 23.345(b); and

(2) Not more than V_F established under 23.345(a), (c) and (d).

(b) Additional combinations of flap setting, airspeed and engine thrust may be established if the structure has been proven for the corresponding design conditions.

SC23.1513 Minimum Control Speed

The minimum control speed(s) V_{MC}, determined under SC23.149(b) and (c) must be established as an operating limitation(s).

SC23.1519 Weight and Center of Gravity

The weight and center of gravity ranges, determined under SC23.23 must be established as operating limitations.

SC23.1521 Powerplant Limitations

(a) General. The powerplant limitations prescribed in this section must be established so that they do not exceed the corresponding limits for which the engines are type certificated. In addition, other powerplant limitations used in determining compliance with this part must be established.

(b) Takeoff operation. The powerplant takeoff operation must be limited by—

(1) The maximum rotational speed (rpm);

(2) The maximum allowable gas temperature;

(3) The maximum allowable oil temperature; and

(4) The time limit for the use of the thrust corresponding to the limitations established in paragraphs (1) and (2) of this special condition.

(c) Continuous operation. The continuous operation must be limited by—

(1) The maximum rotational speed (rpm);

(2) The maximum allowable gas temperature; and

(3) The maximum allowable oil temperature.

(d) Fuel designation. The fuel designation(s) must be established so that it is not less than that required for the operation of the engines within the limitations in paragraphs (b) and (c) of this section.

(e) Ambient temperature. Ambient temperature limitations must be established as the maximum ambient atmospheric temperature at which compliance with the cooling provisions of 23.1041 through 23.1045 is shown.

SC23.1523 Minimum Flight Crew

The minimum flight crew must be established so that it is sufficient for safe operation considering—

(a) The workload on individual crew members;

(b) The accessibility and ease of operation of necessary controls by the appropriate crew member; and

(c) The kinds of operation authorized under SC23.1525.

SC23.1525 Kinds of Operation

The kinds of operation (such as VFR, IFR, day or night) and the meteorological conditions (such as icing) to which the operation of the airplane is limited or from which it is prohibited, must be established appropriate to the installed equipment.

SC23.1527 Maximum Operating Altitude

(a) The maximum altitude up to which operation is allowed, as limited by flight, structural, powerplant, functional, or equipment characteristics, must be established.

(b) A maximum operating altitude limitation of not more than 25,000 feet must be established for pressurized airplanes, unless compliance with § 23.775(e) is shown.

SC23.1529 Instructions for Continued Airworthiness

The applicant must prepare Instructions for Continued Airworthiness in accordance with Appendix G that are acceptable to the FAA. The instructions may be incomplete at type certification if a program exists to ensure their completion prior to the delivery of the first airplane.

Markings and Placards

SC23.1541 General

(a) The airplane must contain—

(1) The markings and placards specified in §§ SC23.1545 through SC23.1567; and

(2) Any additional information, instrument markings and placards required for the safe operation if it has unusual design, operating, or handling characteristics.

(b) Each marking and placard prescribed in paragraph (a) of this section—

(1) Must be displayed in a conspicuous place; and

(2) May not be easily erased, disfigured or obscured.

SC23.1543 Instrument Markings: General

For each instrument—

(a) When markings are on the cover glass of the instrument, there must be means to maintain the correct alignment of the glass cover with the face of the dial;

(b) Each arc and line must be wide enough and located to be clearly visible to the pilot; and

(c) All related instruments must be calibrated in compatible units.

SC23.1545 Airspeed Indicator

Each airspeed indicator must be marked as follows—

(a) For the flap operating range, a white arc with the lower limit at V_{SO} at the maximum weight and the upper limit at the flaps extended speed V_{FE} established under SC23.1511.

(b) A maximum allowable airspeed indication showing the variation of V_{MO}/M_{MO} with altitude or compressibility limitations (as appropriate), or a radial red line marking for V_{MO}/M_{MO} must be made at the lowest value of V_{MO}/M_{MO} established for any altitude up the maximum operating altitude for the airplane.

**SC23.1547 Magnetic Direction Indicator*

(a) A placard meeting the requirements of this section must be installed on or near the magnetic direction indicator.

(b) The placard must show the calibration of the instrument in level flight with the engines operating.

(c) The placard must state whether the calibration was made with radio receivers on or off.

(d) Each calibration reading must be in terms of magnetic headings in not more than 30 degree increments.

(e) If a magnetic non-stabilized direction indicator can have a deviation of more than 10 degrees caused by the operation of electrical equipment, the placard must state which electrical loads, or combination of loads, would cause a deviation of more than 10 degrees when turned on.

SC23.1549 Powerplant Instruments

For each required powerplant instrument, as appropriate to the type of instruments—

(a) Each maximum and if applicable, minimum safe operating limit must be marked with a red radial or a red line;

(b) Each normal operating range must be marked with a green arc or green line not extending beyond the maximum and minimum safe limits;

(c) Each takeoff and precautionary range must be marked with a yellow arc or a yellow line; and

(d) Each engine range that is restricted because of excessive vibration stresses must be marked with red arcs or red lines.

**SC23.1551 Oil Quantity Indicator*

Each oil quantity indicator must be marked in sufficient increments to indicate readily and accurately the quantity of oil.

SC23.1553 Fuel Quantity Indicator

A red radial line must be marked on each indicator at the calibrated zero reading, as specified in 23.1337(b)(1).

SC23.1555 Control Markings

(a) Each cockpit control, other than primary flight controls and simple push-button type starter switches, must be plainly marked as to its function and method of operation.

(b) Each secondary control must be suitably marked.

(c) For powerplant fuel controls—

(1) Each fuel tank selector control must be marked to indicate the position corresponding to each tank and to each existing crossfeed position;

(2) If safe operation requires the use of any tanks in a specific sequence, that sequence must be marked on or near the selector for those tanks;

(3) The conditions under which the full amount of usable fuel in any restricted usage fuel tank can safely be used must be stated on a placard adjacent to the selector valve for the tank; and

(4) Each valve control must be marked to indicate the position corresponding to each engine controlled.

(d) Usable fuel capacity must be marked as follows—

(1) The usable fuel capacity available at each selector control position must be indicated near the selector control.

(e) For accessory, auxiliary and emergency controls—

(1) The landing gear indicator required by 23.729 must be marked so that the pilot can, at any time, ascertain that the wheels are secured in the extreme positions; and

(2) Each emergency control must be red and must be marked as to method of operation. No control other than an emergency control shall be this color.

SC23.1557 Miscellaneous Markings and Placards

(a) Baggage and cargo compartments and ballast location. Each baggage and cargo compartment, and each ballast location, must have a placard stating any limitations on contents, including weight, that are necessary under the loading requirements.

(b) Fuel and oil filler openings. The following apply—

(1) Fuel filler openings must be marked at or near the filler cover with—

(i) The words "Jet Fuel"; and

(ii) The permissible fuel designations, or references to the Airplane Flight Manual (AFM) for permissible fuel designations.

(iii) For pressure fueling systems, the maximum permissible fueling supply pressure and the maximum permissible defueling pressure.

(2) Oil filler openings must be marked at or near the filler cover with—

(i) The word "Oil"; and

(ii) The permissible oil designation, or references to the Airplane Flight Manual (AFM) for permissible oil designations.

(c) Emergency exit placards. Each placard and operating control for each emergency exit must be red. A placard must be near each emergency exit control and must clearly indicate the location of that exit and its method of operation.

(d) The system voltage of each direct current installation must be clearly marked adjacent to its external power connection.

SC23.1559 Operating Limitations Placard

(a) There must be a placard in clear view of the pilot stating—

(1) That the airplane must be operated in accordance with the approved Flight Manual; and

(2) The certificated category to which the placards apply.

(b) There must be a placard in clear view of the pilot that specifies the kind of operations to which the operation of the airplane is limited or from which it is prohibited under SC23.1525.

**SC23.1561 Safety Equipment*

(a) Safety equipment must be plainly marked as to method of operation.

(b) Stowage provisions for required safety equipment must be marked for the benefit of occupants.

SC23.1563 Airspeed Placards

There must be an airspeed placard in clear view of the pilot and as close as practicable to the airspeed indicator. This placard must list—

(a) The design maneuvering speed, V_O; and

(b) The maximum landing gear operating speed V_{LO};

(c) The maximum value of the minimum control speed V_{MC} (one-engine inoperative) determined under SC23.149 (b) and (c).

SC23.1567 Flight Maneuver Placard

There must be a placard in clear view of the pilot—

(a) Listing the control actions for recovery from spinning maneuvers; and

(b) Stating that recovery must be initiated when spiral characteristics appear, or after not more than six turns or not more than any greater number of turns for which the airplane has been certificated.

Airplane Flight Manual

SC23.1581 General

(a) An FAA-Approved Airplane Flight Manual must be furnished with each airplane and it must contain the following—

(1) Information required by SC23.1583 through SC23.1589.

(2) Other information that is necessary for safe operation because of design, operating or handling characteristics.

(3) Further information necessary to comply with the relevant operating rules.

(b) Each part of the Airplane Flight Manual containing information prescribed in SC23.1583 through SC23.1589 must be approved, segregated, identified and clearly distinguished from each unapproved part of the Airplane Flight Manual.

(c) The units used in the Airplane Flight Manual must be the same as those marked on the appropriate instruments and placards.

(d) All Airplane Flight Manual operational airspeeds must, unless otherwise stated, be presented as indicated airspeeds.

(e) Provisions must be made for stowing the Airplane Flight Manual in a suitable fixed container which is readily accessible to the pilot.

(f) Each Airplane Flight Manual must contain a means for recording the incorporation of revisions and/or amendments.

SC23.1583 Operating Limitations

The Airplane Flight Manual must contain operating limitations determined under the applicable regulations, including the following—

(a) Airspeed limitations.

(1) Information necessary for the marking of the airspeed limits on the indicator as required in SC23.1545, and the significance of each of those limits and of the color coding used on the indicator.

(2) The speeds V_{MC}, V_O, V_{LE}, and V_{LO} and their significance.

(b) Powerplant limitations.

(1) Limitations required by SC23.1521.

(2) Explanation of the limitations marking the instruments required by SC23.1549 through SC23.1553.

(c) Weight.

(1) The maximum weight; and

(2) The maximum landing weight, if the design landing weight selected by the applicant is less than the maximum weight.

(3) The maximum takeoff weight for each airport altitude and ambient temperature within the range selected by the applicant not exceeding the weight at which the airplane complies with the climb requirements of SC23.63.

(4) The maximum landing weight for each airport altitude and ambient temperature within the range selected by the applicant not exceeding the weight at which the airplane complies with the climb requirements of SC23.63(b)(2).

(5) The maximum zero fuel weight, where relevant.

(d) Center of gravity. The established center of gravity limits.

(e) Maneuvers. The following authorized maneuvers, appropriate airspeed limitations, and unauthorized maneuvers, as prescribed in this section.

(1) A list of approved acrobatic flight maneuvers demonstrated in the type flight tests, together with recommended entry speeds and any other associated limitations.

(2) Spin recovery procedure established to show compliance with SC23.151(d).

(f) Maneuve load factor. The positive and negative limit load factors in g's.

(g) Minimum flight crew. The number and functions of the minimum flight crew determined under SC23.1523.

(h) Kinds of operation. A list of the kinds of operation to which the airplane is limited or from which it is prohibited under SC23.1525, and also a list of installed equipment that affects any operating limitation and identification as to the equipment's required operational status for the kinds of operation for which approval has been granted.

(i) Maximum operating altitude. The maximum altitude established under SC23.1527.

(j) Allowable lateral fuel loading. The maximum allowable lateral fuel loading differential, if less than the maximum possible.

(k) Baggage and cargo loading. The following information for each baggage and cargo compartment or zone—

(1) The maximum allowable load; and

(2) The maximum intensity of loading.

(l) Systems. Any limitations on the use of airplane systems and equipment.

(m) Ambient temperatures. Where appropriate, maximum and minimum ambient air temperatures for operation.

(n) Smoking. Any restrictions on smoking in the airplane.

(o) Types of surface. A statement of the types of surface on which operations may be conducted must be provided.

SC23.1585 Operating Procedures

Information concerning normal, abnormal (if applicable) and emergency procedures and other pertinent information necessary for safe operation and the achievement of the scheduled performance, must be furnished, including—

(a) An explanation of significant or unusual flight or ground handling characteristics.

(b) The maximum demonstrated values of crosswind for take-off and landing and procedures and information pertinent to operations in crosswinds.

(c) Procedures, speeds and configuration(s) for making a normal takeoff in accordance with SC23.51 and SC23.53 and the subsequent climb in accordance with SC23.65 and SC23.69.

(d) Procedures for abandoning a takeoff due to engine failure or other cause.

(e) A recommended speed for flight in rough air. This speed must be chosen to protect against the occurrence, as a result of gusts, of structural damage to the airplane and loss of control (e.g. stalling).

(f) Procedures, speeds and configuration(s) for making a normal approach and landing in accordance with SC23.73 and SC23.75 and a transition to the balked landing condition.

(g) Procedures for restarting any engine in flight, including the effects of altitude.

(h) Procedures and speeds for continuing a take-off following engine failure and the conditions under which takeoff can safely be continued, or a warning against attempting to continue the takeoff.

(i) Procedures, speeds and configurations for continuing a climb following engine failure, after take-off in accordance with SC23.67 and en route in accordance with SC23.69.

(j) Procedures, speeds and configuration(s) for making an approach and landing with one engine inoperative.

(k) Procedures, speeds and configuration(s) for making a balked landing with one engine inoperative and the conditions under which a balked landing can safely be performed or a warning against attempting a balked landing.

(l) The V_{SSE} determined in SC23.149.

(m) Information identifying each operating condition in which the fuel system independence prescribed in § 23.953 is necessary for safety must be furnished, together with instructions for placing the fuel system in a configuration used to show compliance with that section.

(n) For each airplane showing compliance with 23.1353(g)(2) or (g)(3), the operating procedures for disconnecting the battery from its charging source must be furnished.

(o) Information on the total quantity of usable fuel for each fuel tank and the effect on the unusable fuel quantity as a result of a failure of any pump, must be furnished.

(p) Procedures for the safe operation of the airplane's systems and equipment, both in normal use and in the event of malfunction, must be furnished.

SC23.1587 Performance Information

Unless otherwise prescribed, the following information must be furnished over the altitude and temperature ranges required by SC23.45(b)—

(a) The stalling speeds V_{s0}, and V_{s1} with the landing gear and wing flaps retracted, determined at maximum weight under SC23.49 and the effect on

these stalling speeds of angles of bank up to 60 degrees.

(b) The takeoff distance, determined under SC23.53 and the type of runway surface for which it is valid.

(c) The steady rate and gradient of climb with all engines operating, determined under SC23.69(a).

(d) The landing distance, determined under SC23.75 and the type of runway surface for which it is valid.

(e) The effect on takeoff and landing distances of operation on other than smooth hard surfaces, when dry, determined under SC23.45(g).

(f) The effect on takeoff and landing distances of runway slope and 50 percent of the headwind component and 150 percent of the tailwind component.

(g) The steady rate and gradient of climb/descent with one engine inoperative, determined under SC23.69(b).

(h) The steady gradient of climb/descent, determined under SC23.66.

SC23.1589 Loading Information

The following loading information must be furnished—

(a) The weight and location of each item of equipment that can easily be removed, relocated, or replaced and that is installed when the airplane was weighed under SC23.25.

(b) Appropriate loading instructions for each possible loading condition between the maximum and minimum weights established under SC23.25, to facilitate the center of gravity remaining within the limits established under SC23.23.

5. Effects of Contamination of Natural Laminar Flow Airfoils

In the absence of specific requirements for airfoil contamination, airplane airfoil designs that have airfoil pressure gradient characteristics and smooth aerodynamic surfaces that may be capable of supporting natural laminar flow must comply with the following:

(a) It must be shown by tests, or analysis supported by tests, that the airplane complies with the requirements of SC23.141 through SC23.253 and special condition 4 with any airfoil contamination that would normally be encountered in service and that would cause significant adverse effect on the handling qualities of the airplanes resulting from the loss of laminar flow.

(b) Significant performance degradations identified as resulting from the loss of laminar flow must be provided as part of the information required by special condition 4.

Issued in Kansas City, Missouri on September 13, 1993.

John Tigue,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–24954 Filed 10–8–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–CE–87–AD]

Airworthiness Directives: de Havilland DHC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 80–13–11 R2, which currently requires repetitively inspecting the elevator, flap, aileron, and rudder control rods for cracks on certain de Havilland DHC–6 series airplanes, replacing any cracked rod, and installing rod sleeves. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate or, in certain instances, reduce the number of repetitions of certain short-interval inspections when improved parts or modifications are available. The proposed action would require the incorporation of a modification that would reduce the need for the number of repetitions of the inspections currently required by AD 80–13–11 R2. The actions specified in the proposed AD are intended to prevent cracking of these control rods, which could result in loss of control of the airplane.

DATES: Comments must be received on or before December 17, 1993.

ADDRESSES: Submit comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–87–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; Telephone (516) 791–6220.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–CE–87–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–87–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of repetitions of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace or, in certain instances, reduce the number of repetitions of a critical inspection. With this policy in mind, the FAA recently conducted a review of existing AD's that apply to de Havilland DHC–6 series airplanes. Assisting the FAA in this review were (1) Transport Canada, which is the airworthiness authority for Canada; (2) de Havilland, Inc.; (3) the Regional Airlines Association (RAA); and (4) several U.S. and foreign operators of the affected airplanes.

From this review, the FAA has identified AD 80–13–11 R2, Amendment 39–4703, as one that should be superseded with a new AD that would require a modification and reduction of the number of repetitions of the short-interval and critical inspections. AD 80–13–11 R2 currently requires repetitively inspecting the elevator, flap, aileron, and rudder control rods for cracks on certain de Havilland DHC–6 series airplanes, replacing any cracked rod, and installing rod sleeves. These actions are required to be accomplished in accordance with de Havilland Service Bulletin (SB) No. 6/390, Revision A, dated June 9, 1980.

De Havilland has issued SB No. 6/502, dated March 24, 1989, which specifies procedures for replacing elevator, flap, aileron, and rudder control rods and elevator trim and elevator/flap interconnect control rods on certain de Havilland DHC–6 series airplanes. In addition, de Havilland has revised SB 6/390 to the Revision E level, which clarifies the inspection procedures of these control rods on the affected airplanes.

As a result of the previously discussed AD review, Transport Canada considers the modification referenced in de Havilland SB No. 6/502, dated March 24, 1989, as mandatory and has issued Transport Canada AD CF–80–03R2, dated October 18, 1991, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above.

Based on its aging commuter-class aircraft policy and after reviewing all available information including that received from Transport Canada, the FAA has determined that AD action should be taken to reduce the number of repetitions of the short-interval and critical inspections required by AD 80–13–11 R2 and to prevent failure of the elevator, flap, aileron, and rudder control rods caused by cracking, which could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other de Havilland DHC- 6 series airplanes of the same type design, the proposed AD would supersede AD 80–13–11 R2 with a new AD that would (1) require replacing elevator, flap, aileron, and rudder control rods and elevator trim and elevator flap/interconnect control rods with improved parts; and (2) retain the aileron control rod inspections currently required by AD 80–13–11 R2, but reduce the number of repetitions of these inspections. The proposed replacement would be accomplished in accordance with de Havilland SB No. 6/502, dated March 24, 1989; and the proposed inspections would be accomplished in accordance with de Havilland SB No. 6/390, Revision E, dated December 20, 1991.

The FAA estimates that 169 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 20 workhours (4 workhours/ inspection and 16 workhours/replacement) per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $15,600 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,822,300.

AD 80–13–11 R2, which would be superseded by the proposed action, currently requires inspecting these control rod assemblies for cracks at intervals of 800 hours time-in-service (TIS), but requires removing the rod assemblies, inspecting with a 10-power glass, and then reinstalling the assemblies. These inspections take approximately 32 workhours at an average cost of $55 per hour; approximately $1,760 per airplane or $297,440 for the entire fleet. The inspection procedures of the proposed AD would be less costly and less frequent than those required by AD 80–13–11 R2.

With the above figures in mind including the costs for the modification proposed by this action, the proposed AD would cost an additional $14,940 per airplane over that already required by AD 80–13–11 R2, or a total additional fleet cost of $2,524,860. These figures do not account for the recurring costs through the repetitive inspection requirement of AD 80–13–11 R2 and the proposed AD. The proposed AD would only require repetitive inspections every 2,400 hours TIS after the control rod assembly is replaced, where AD 80–13–11 R2 currently requires repetitive inspections every 800 hours TIS.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 169 airplanes in the U.S. registry that would be affected by the proposed AD, the FAA has determined that approximately 50 percent are operated in scheduled passenger service by 14 different operators. A significant number of the remaining 50 percent are operated in other forms of air transportation such as air cargo and air taxi.

The proposed AD allows 500 hours time-in-service (TIS) before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 2 to 5 calendar months after the proposed AD would become effective. Based on these scheduled operation figures, repetitive inspections for the proposed AD for operators who had accomplished the modification would be required approximately every 1 to 2 calendar years. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 2 to 5 calendar years before the proposed modification would be mandatory. Based on these nonscheduled operation figures, repetitive inspections for the proposed AD for operators who had accomplished the modification would be required approximately every 12 to 24 calendar years.

The incremental costs of the proposed AD would depend on the remaining service life of a DHC–6 and its utilization, i.e., the number of hours TIS per year. The proposed AD would provide a cost savings over that already required to most owner/operators of de Havilland DHC–6 airplanes. The following examines the incremental costs to owners of de Havilland DHC–6 series airplanes with remaining service lives of 10, 20, and 30 years if the airplanes are utilized between 100 and 2,500 hours TIS annually.

The proposed AD would provide a cost savings at a service life of 10 years for operators utilizing their airplanes less than 135 hours TIS or more than 1,000 hours TIS annually, and would provide a cost savings at service lives of 20 and 30 years for all de Havilland DHC–6 series airplanes, regardless of airplane usage. The savings resulting from the less frequent inspections more than offset the costs of replacing the control rods. The cost savings would be at least $2,800 at an average 20-year remaining service life and utilizing a 7 percent interest rate. For a 30-year remaining service life, the operator should realize a cost savings of at least $6,000 (with a 7 percent interest rate).

De Havilland DHC–6 series airplanes that are utilized between 135 and 1,000 hours TIS annually may not see a cost savings when replacing the control rods based upon a 10-year remaining service life. Before issuing this notice of proposed rulemaking, the FAA took into account that the costs of replacing the rods could be greater than the savings from the inspections required by the proposed AD for these airplanes utilizing their airplanes within this range.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a "significant economic impact on a substantial number of small entities," and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions. A "substantial number" is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to the proposed rule, or any number of small entities subject to the rule which is substantial in the judgment of the rulemaking official. A "significant economic impact" is defined as an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types. FAA Order 2100.14A sets the size threshold for small entities operating aircraft for hire at 9 aircraft owned and annualized cost threshold at $65,300 for scheduled operators and $4,600 for unscheduled operators (expressed in second quarter 1993 dollars).

The 169 U.S.-registered airplanes affected by the proposed AD are owned according to the following breakdown: 13 by individuals, 8 by U.S. government agencies, and 148 by businesses or not-for-profit enterprises. Of the 148 entities, one owns 26 airplanes, one owns 11 airplanes, nineteen own between 2 and 9 airplanes, and fifty own 1 airplane each.

The FAA cannot determine the sizes of all the 148 owner entities nor the relative significance of the costs or cost savings estimated above. However, more than one-third of these entities operate their de Havilland DHC–6 series airplanes in scheduled service. According to statistics obtained by the FAA, these airplane operators in scheduled service utilize their airplanes an average of 1,383 hours TIS annually, and general aviation operators utilize their airplanes an average of 706 hours TIS annually. These figures may have a standard of error of 14.4 percent and the general aviation average may include some airplanes in commuter service. The FAA cannot reasonably estimate the distribution of these hours among the de Havilland DHC–6 fleet.

Because of these uncertainties, no cost thresholds for significant economic impact can be reasonably determined. The FAA solicits comments concerning the impact of this proposed AD on small entity owners of affected airplanes. Based on the possibility that this proposed AD could have a significant impact on a substantial number of small entities, the FAA conducted a regulatory flexibility analysis. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of substantial public interest; and, (3) if promulgated, may have a significant economic impact on a substantial number of small entities. The FAA has conducted an Initial Regulatory Flexibility Determination and Analysis and has considered alternatives to this proposal that could minimize the impact on small entities. A copy of this analysis may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES". After careful consideration, the FAA has determined that the proposed action is the best course to achieve the safety objective of returning the airplane to its original certification level of safety. Alternative actions and views are solicited from interested persons and will be considered by the FAA in the development of the final rule.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by removing AD 80–13–11 R2, Amendment 39–4703, and by adding the following new AD:

de Havilland: Docket No. 91–CE–87–AD. Supersedes AD 80–13–11 R2, Amendment 39–4703.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (all serial numbers), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent loss of control of the airplane caused by cracked elevator, flap, aileron, and rudder control rods, accomplish the following:

(a) Within the next 500 hours time-in-service (TIS) after the effective date of this AD, replace all 2024–T3 or 2024–T81 elevator, flap, aileron, and rudder control rods and elevator trim and elevator/flap interconnect control rods with 6061–T6 control rods as specified in and in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Service Bulletin (SB) No. 6/502, dated March 24, 1989.

Note 1: The specific part numbers of the 2024–T3 or 2024–T81 control and

interconnect control rods and their 6061–T6 replacement part numbers are contained in de Havilland SB No. 6/502, dated March 24, 1989.

(b) Within 2,400 hours TIS after the replacement required by paragraph (a) of this AD, and thereafter at intervals not to exceed 2,400 hours TIS, inspect all elevator, flap, aileron, and rudder control rods and elevator trim and elevator/flap interconnect control rods for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/390, Revision E, dated December 20, 1991. Prior to further flight, replace any cracked rod with a new 6061–T6 rod as specified in and in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/502, dated March 24, 1989.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office, 181 Franklin Avenue, room 202, Valley Stream, New York 11581. The request shall be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 80–13–11 R2, Amendment 39–4703.

Issued in Kansas City, Missouri, on October 5, 1993.

John E. Tigue,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–24916 Filed 10–8–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–112–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and Model KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes, that currently requires certain structural modifications and inspections. This action would require additional structural modifications and inspections. This proposal is prompted by an evaluation by the Model DC–10 Task Group, which identified additional modifications for mandatory action. The actions specified by the proposed AD are intended to prevent degradation in the structural capabilities of the affected airplanes. This action also reflects the FAA's decision that long term continued operational safety should be assured by actual modification of the airframe, where feasible, rather than only repetitive inspections for known service problems.

DATES: Comments must be received by December 7, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–112–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–112–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–112–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 4, 1990, the FAA issued AD 90–16–04, Amendment 39–6613 (55 FR 31816, August 6, 1990), to require certain structural modifications and inspections of McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes. That action was prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design goal. These incidents have jeopardized the airworthiness of the affected airplanes. The requirements of that AD are intended to prevent degradation in the structural capabilities of the affected airplanes.

Since the issuance of that AD, the McDonnell Douglas DC–10/KC–10A Model Task Group, comprised of representatives from Model DC–10/KC–10A operators, the manufacturer, and the FAA, has completed its review of certain revised service bulletins that are applicable to aging Model DC–10 series airplanes and Model KC–10A (military) airplanes. The Task Group has recommended these service bulletin revisions for mandatory modification and inspection in order to reduce the

potential for major structural failure of those airplanes.

Consequently, McDonnell Douglas has issued Revision B to Report No. MDC K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document," dated March 24, 1993, which reflects the Working Group's proposal and incorporates the revised service bulletins discussed previously. The FAA has reviewed and approved that document. The document references the following service bulletins:

1. Two service bulletins that describe modifications of the power plant;
2. Six service bulletins that describe inspections and modifications of the wings;
3. Two service bulletins that describe inspections and modifications of the horizontal stabilizer;
4. Ten service bulletins that describe inspections and modifications of the nacelles/pylons;
5. Nine service bulletins that describe inspections and modifications of the fuselage;
6. Two service bulletins that describe inspections and modifications of the landing gear; and
7. Two service bulletins that describe ice and rain protection inspections and modifications.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90–16–04 to require additional structural modifications and inspections. The actions would be required to be accomplished in accordance with the McDonnell Douglas document described previously.

There are approximately 426 Model DC–10 series airplanes and Model KC–10A (military) airplanes of the affected design in the worldwide fleet.

The FAA estimates that 194 airplanes of U.S. registry were originally affected by AD 90–16–04. The requirements of that AD were estimated to take approximately 360 work hours to accomplish, at a current average labor rate of $55 per work hour. The cost for required modification kits was estimated to be $9,600 per airplane. Based on these figures, the FAA estimated that the total cost impact of AD 90–16–04 on U.S. operators would be $5,703,600, or $29,400 per airplane, over the initial 4-year time period. (These figures do not include the cost of downtime, planning, set-up, familiarization, or tool acquisition.)

The FAA estimates that a total of 269 airplanes of U.S. registry would be affected by the new requirements specified in this proposed AD. This increase in the number of affected airplanes is due to various reasons, including transfer of ownership and the fact that additional airplanes have accumulated time-in-service since the issuance of AD 90–16–04 and have now reached the threshold for modification/inspection. The new additional requirements proposed by this AD action would take approximately 796 additional work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Required parts would cost an additional $101,900 per airplane. Based on these figures, the total additional cost impact of this proposed AD on U.S. operators is estimated to be $39,187,920, or $145,680 per airplane, over a 4-year time period. (These figures do not include the cost of downtime, planning, set-up, familiarization, and tool acquisition).

The figures discussed above assume that no operator has yet accomplished the currently required or the newly proposed requirements of this AD action; however, the FAA has been advised that many of the affected airplanes have previously accomplished various modifications that would be required by this AD.

Additional airplanes will be affected as they accumulate time-in-service and reach the threshold for modification/inspection.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6613 (55 FR 31816, August 6, 1990), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 93–NM–112–AD. Supersedes AD 90–16–04, Amendment 39–6613.

Applicability: All Model DC–10–10, –10F, –15, –30, –30F, –40, and –40F series airplanes and Model KC–10A (military) airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraphs (a) and (c) of this AD restate the requirements for an initial inspection and the repetitive inspections contained in paragraphs A. and C. of AD 90–16–04. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 90–16–04, paragraphs (a) and (c) of this AD require that the next scheduled inspection be performed within the specified repetitive inspection interval after the last inspection performed in accordance with paragraphs A. and C. of AD 90–16–04.

Note 2: Paragraphs (b) and (d) of this AD restate the modification requirements of paragraphs B. and D. of AD 90–16–04. As allowed by the phrase, "unless accomplished previously," if the requirements of paragraphs B. and D. of AD 90–16–04 have been accomplished previously, paragraphs (b) and (d) of this AD do not require that they be repeated.

To prevent structural failure, accomplish the following:

(a) For service bulletins other than those identified in paragraph (c) of this AD, within the threshold for inspections specified in the service bulletins listed in Table 2.1 of McDonnell Douglas Report No. MDC–K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document," Revision A, dated February 28, 1990 (hereafter referred to as the "SARD, Revision A"), or Revision B, dated March 24, 1993 (hereafter referred to as the "SARD, Revision B"), or within one repetitive inspection period specified in

those service bulletins after September 10, 1990 (the effective date of AD 90–16–04, Amendment 39–6613), whichever occurs later, inspect for cracks in accordance with those service bulletins. Repeat these inspections thereafter at the intervals specified in the service bulletins listed in Table 2.1 of the SARD, Revision A or Revision B.

(1) If any crack is found as a result of any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 3: Detection of any discrepancies other than cracking necessitates appropriate corrective action in accordance with the provisions of Part 43 of the Federal Aviation Regulations (FAR).

(2) Modification in accordance with paragraph (b) of this AD terminates the individual inspection requirements of the applicable service bulletin.

(b) For service bulletins other than those identified in paragraph (c) of this AD, prior to reaching the incorporation thresholds listed in the SARD, Revision A or Revision B, or prior to four years after September 10, 1990, whichever occurs later, accomplish the structural modifications specified in the service bulletins listed under "S/B No. Rev." in Table 2.1 of the SARD, Revision A or Revision B.

Note 4: The service bulletin revision levels listed under "Recommended Modification" in Table 2.1 of the SARD, Revision B, are acceptable revisions for modifications accomplished prior to September 10, 1990.

Note 5: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

(c) For McDonnell Douglas Service Bulletins A30–37, 30–38, 53–16, 53–19, 53–25, 54–11, 54–27, 54–33, 55–2, and 57–7, listed in Table 2.1 of the SARD, Revision A; and for McDonnell Douglas Service Bulletins A30–37, 30–38, 53–16, 53–19, 53–25, 54–11, 54–27, 55–2, and 57–7, listed in Table 2.1 of the SARD, Revision B: Within the threshold for inspections listed under "S/B Change Required" in Table 2.1 of the SARD, Revision A or Revision B, or within one repetitive inspection period specified under "S/B Change Required" in Table 2.1 of the SARD, Revision A or Revision B, after September 10, 1990, whichever occurs later, inspect for cracks in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Repeat these inspections thereafter at the intervals specified under "S/B Change Required" in Table 2.1 of the SARD, Revision A or Revision B.

(1) If any crack is found during any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Modification in accordance with paragraph (d) of this AD terminates the individual inspection requirements of the applicable service bulletin.

(d) Prior to four years after September 10, 1990, accomplish the structural modifications stipulated in the service bulletins specified in paragraph (c) of this AD.

(e) Within the threshold for inspections specified in the service bulletins listed in Table 2.2 of the SARD, Revision B, or within one repetitive inspection period specified in those service bulletins after the effective date of this AD, whichever occurs later, inspect for cracks in accordance with those service bulletins. Repeat these inspections thereafter at the intervals specified in the service bulletins listed in Table 2.2 of the SARD, Revision B.

(1) If any crack is found during any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Modification in accordance with paragraph (f) of this AD terminates the individual inspection requirements of the applicable service bulletin.

(f) Prior to reaching the incorporation thresholds listed in the SARD, Revision B, or within four years after the effective date of this AD, whichever occurs later, accomplish the structural modifications specified in the service bulletins listed in Table 2.2 of the SARD, Revision B.

Note 6: The service bulletin revision levels listed under "Recommended Modification" in Table 2.2 of the SARD, Revision B, are acceptable revisions for modifications accomplished prior to the effective date of this AD.

Note 7: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on October 5, 1993.

Suzanne Stevens,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–24918 Filed 10–8–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5, 25, 170, 171, and 174

[Docket No. 92N–0181]

RIN 0905–AD86

Food Additives; Threshold of Regulation for Substances Used in Food-Contact Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish a process for determining when the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial as not to require regulation of the substance as a food additive. Under this process, information about the proposed use of a substance will undergo an abbreviated review by FDA, as opposed to the extensive review and formal issuance of a regulation normally required for food additives. In this document, FDA is proposing the criteria that it will use as part of this review in deciding whether to regulate the use of a substance as a food additive, as well as identifying the types of data that it will need to make this determination.

DATES: Written comments by December 13, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9528.

SUPPLEMENTARY INFORMATION:

I. Background

In 1958, Congress amended the Federal Food, Drug, and Cosmetic Act (the act) to require premarket approval of food additives (sections 201(s), 402(a)(2)(C), and 409 (21 U.S.C. 321(s),

342(a)(2)(C), and 348)). A "food additive," as defined in section 201(s) of the act, is:

> * * * any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; * * *), if such substance is not generally recognized, among experts qualified by scientific training or experience to evaluate its safety, as having been adequately shown through scientific procedures * * * to be safe under the conditions of its intended use * * *.

Under section 409(a) of the act, the use of a food additive is deemed unsafe unless it either conforms to the terms of a regulation prescribing its use or to an exemption for investigational use. Consequently, the safety of the substance under its intended conditions of use must be demonstrated, and a food additive regulation issued, before the substance can be used in food. Petitions submitted to establish that a use of a food additive is safe ordinarily contain or reference data from toxicological studies that demonstrate to a reasonable certainty that there will be no harm resulting from the specific use of the subject additive. In this regard, petitions must include information that will enable FDA to estimate the dietary concentration resulting from the intended use of the substance. They also address the potential for an environmental impact resulting from the manufacture, use, and disposal of the proposed food additive.

A strict interpretation of the definition of "food additive" would make all substances that migrate, or may be expected to migrate, from food-contact materials into food subject to premarket approval as food additives. However, agency personnel, in response to inquiries from manufacturers of food-contact articles, have stated that certain specific uses of substances in food-contact materials did not require regulation under the food additive provisions. Based on these responses, food additive petitions have not been submitted for use of substances that were expected to result in very low levels of migration and that did not raise any safety concerns. However, this system has never been formalized.

In addition to submitting requests for exemptions from the food additive regulations for specific uses of specific substances, representatives of the food-packaging and food-processing industries have suggested that FDA establish a threshold of regulation policy for such substances. For example, the Society of Plastics Industries submitted a citizen petition (Docket No. 77–0122) requesting that FDA modify § 170.3(e) (21 CFR 170.3(e)), the regulation that defines "food additive," so that the use of a substance that does not result in detectable levels of migration into food-simulating solvents (using validated analytical methods sensitive to at least 50 parts per billion (ppb)) would be exempt from regulation as a food additive unless there was scientific evidence to indicate that the substance presents a significant risk of harm to human health. However, FDA has been reluctant to adopt these or any other proposals in the absence of data clearly showing that substances present in the daily diet at concentrations at or below the proposed threshold level would not pose safety concerns.

A Federal court also has addressed the issue of whether the use of a food-contact material involving insignificant migration into food can be exempted from the food additive regulations. In *Monsanto* v. *Kennedy*, 613 F. 2d 947 (D.C. Cir. 1979)), the Monsanto Co. contended that no migration of acrylonitrile copolymer resulted from the use of their beverage bottles that contained the substance, and that, therefore, the bottles did not have to be regulated as food additives. In its decision, the court stated that the Commissioner of Food and Drugs may determine that the level of migration into food of a particular substance is so negligible as to present no public health concerns and, in such cases, may decline to define the substance as a food additive even though it comes within the strictly literal terms of the statutory definition of a food additive (see 613 F. 2d at 955). The court also stated that the Commissioner has the discretion to decline to exercise this exemption authority (id. at 956).

The agency recognizes that, historically, a number of companies have made their own determination that a particular substance effectively does not migrate to food and thus is not a food additive under its conditions of use. They have marketed the products without recourse to the regulatory process. Nothing in the regulatory scheme presented in this proposed rule would prevent a company from making its own determination that a particular use of a substance does not meet the definition of a food additive. However, as always, the company makes such a determination at its own risk. If the agency learns of the use of a substance from, for example, a competitor and reaches a different conclusion than the company, the agency may take regulatory action against the substance as an unsafe food additive or against the company that makes the substance for introducing an adulterated food into interstate commerce. Therefore, in cases where it is not clear whether the use of a food-contact article would meet the food additive definition, FDA recommends that manufacturers seek a determination under the procedures that FDA is proposing to avoid the possibility of regulatory action.

II. Need for a Threshold of Regulation for Substances Used in Food-Contact Articles

The existing informal practice of determining by letter when a petition is needed for a particular use of a substance presents several problems. While agency personnel have been issuing these letters over the past three decades, the analytical methods used to detect migration into food from indirect food additives, such as packaging materials, have become capable of detecting and measuring much smaller quantities. As a result, many of the food-contact uses for which no migration into food was detectable using older analytical methodologies, may now be shown to result in measurable levels of migration. Therefore, the basis for some letters issued for use of a food-contact material showing "no detectable migration" may no longer be valid. This practice, however, provides no mechanism by which the informal opinions rendered by agency employees can be updated to reflect scientific developments.

A second problem with these opinion letters is that scientific laws of diffusion predict that any two substances that are in contact with one another will tend to diffuse into each other (Ref. 1). As a result, even if migration cannot be detected, it is still likely to be occurring at some level below the detection limit. Therefore, one could argue that all food-contact uses may reasonably be expected to result in migration of the food-contact material into food.

A third problem with the current practice is that because the criteria for data needed to evaluate such requests have never been published, the quality of the requests submitted to FDA for review varies considerably. In many cases, the original submission does not contain adequate data, and FDA has to request additional data to complete the review. As a result, many of these requests for informal opinions have to be reviewed several times. These multiple reviews compete for the resources necessary to review food additive petitions.

FDA believes that the regulation proposed in this document for determining when the likelihood/extent of migration of a substance from a food-contact article is so trivial as not to require regulation as a food additive offers the following advantages over the current practice:

1. It will establish a specific dietary concentration level as the threshold of regulation for substances used in food-contact articles. As a result, there will be a uniform standard for all determinations as opposed to a "no detectable migration" standard, which depends on the detection limits of analytical methods. Because the toxicological effect of a substance is directly related to its concentration in the diet, evaluation of the dietary concentration resulting from the use of a substance is more appropriate for assessing potential health risk than an evaluation that is limited either to the level of migration or to whether a migrating substance can be detected.

Under the proposed regulation, the fact that the use of a substance in a food-contact article may reasonably be expected to result in migration at levels below the analytical detection limit is not determinative. The substance will qualify for an exemption from regulation as a food additive if the estimated dietary concentration of the substance is below the level that is of regulatory concern. If the estimated dietary concentration is above the regulatory concern level, FDA will not grant an exemption from regulation as a food additive for the substance even though no migration into food has been detected.

2. A regulation outlining data requirements for determining when the use of a substance in a food-contact article will result in negligible dietary concentration will increase the likelihood that a submission will contain all the data needed for FDA's review. Because it will decrease the chance that a particular request will need to be reviewed more than once, in most cases a review under the proposed regulation will require fewer resources than a review under the current practice. In addition, the agency is confident that a decision under the proposed regulation will require significantly fewer resources than the review of a food additive petition and the issuance of a listing regulation.

The agency believes that the degree of effort expended in its review of the safety of a substance should be related to the likelihood that the use of the substance poses a potential health hazard (Ref. 2). The use of a substance that results in a high dietary concentration will have a higher likelihood of posing a potential health hazard than the use of the same substance (or one with similar toxic potency) that results in a lower dietary concentration. Therefore, the agency believes that its resources should be applied preferentially to those substances whose use results in high dietary concentrations. Subjecting the use of a substance that results in trivial dietary concentrations to an abbreviated review under the proposed regulation will be a more effective use of resources than subjecting it to the extensive review and the regulatory process normally required for food additives. The resultant savings in reviewer time will mean that reviewers will have more time to spend on food additive petitions for food ingredients and food-contact articles that do involve significant migration into food.

Moreover, because reviews made under proposed § 170.39 will require significantly fewer resources than petition reviews, decisions on whether a substance under its proposed conditions of use requires regulation as a food additive can be issued relatively quickly. As a result, substances used in food-contact articles that FDA exempts from regulation as food additives will be able to be marketed sooner than under current procedures.

3. Issuing a regulation establishing a threshold of the agency's regulatory concern will also decrease the likelihood that a requestor, unaware of a previous informal opinion letter, will submit a food additive petition or a request for exemption for the same type of food-contact application for which the agency has already issued an informal opinion letter. A list of the decisions on uses of substances exempted from the food additive regulations under this proposed regulation will be maintained by the agency and will be available at FDA's Dockets Management Branch.

For these reasons, FDA tentatively finds that it is appropriate to adopt a regulation that sets a specific dietary concentration level as the threshold of regulation for food-contact materials. Under this proposed regulation, the use of a noncarcinogenic substance that is shown, through data submitted to FDA, to result in a dietary concentration that does not exceed the threshold will be exempted by FDA from regulation as a food additive.

III. Selection of Criteria for the Proposed Threshold of Regulation

FDA believes that there are two basic types of cases in which the use of a substance in a food-contact article would qualify for an exemption from regulation as a food additive. The first type would involve the use of a substance in a food-contact article where the resulting dietary concentration of that substance is so negligible as to pose no public health concerns. The second type would involve a regulated direct food additive for use in a food-contact article where the resulting dietary concentration is negligibly small compared to the dietary concentration resulting from those uses in which it is added directly to food. The threshold of regulation that FDA is proposing to establish for each of these cases is described below.

A. Selection of a Specific Level of Dietary Concentration That Poses No Safety Concerns

In considering what level to set as the threshold of regulation, FDA reviewed a study by the Society of Plastics Industries that assessed the feasibility of establishing a threshold of regulation for substances used in food-contact articles (Ref. 3). The consensus view of the participants in this study was that a threshold of regulation of up to 1 ppb in the diet may be contemplated for indirect additives for which no toxicological data have been developed. However, FDA's consideration of this issue has led it to propose a somewhat lower level.

The dietary concentration chosen as the threshold of regulation must be low enough to ensure that the public health is protected, even in the event that a substance exempted from regulation as a food additive is later found to be a carcinogen. Known carcinogens and substances whose chemical structures provide reason to suspect that they may be carcinogens will be excluded from review under the proposed regulation (§ 170.39(a)(1)) because the use of carcinogens as food additives is prohibited by the Delaney Clause (section 409(c)(3)(A) of the act).

Because the likelihood of a substance posing a health hazard depends on its dietary concentration and on its toxic potency, the agency considered both of these factors in establishing a threshold of regulation level. Because of its belief that the degree of effort expended in its review of the safety of a substance should be related to the potential health risk, FDA has generally not required long-term toxicity testing for substances migrating into food at low levels. Thus, in selecting a threshold of regulation level, FDA initially considered short-term toxicity data.

Although many of the substances that will be reviewed under the proposed regulation will not have been the subject

of toxicological oral feeding studies, it is possible to predict the likely range of toxic potency for an unstudied compound based on an analysis of the toxic potencies of a large number of representative compounds. Analysis of the data on 18,000 acute oral feeding studies in rats and mice found that all of the acute toxic effects occurred above 1,000 ppb (Ref. 4). Because of the large number and wide variety of chemicals used in this analysis, it is representative of the substances used in the manufacture of food-contact articles. Therefore, this analysis can be used to predict the upper-bound dietary concentration at which an unstudied chemical (i.e., one that has not been the subject of toxicological feeding studies) is unlikely to cause acute toxic effects.

The agency also considered the toxic effects that result from chronic exposure to chemical substances. The results of 2-year chronic oral feeding studies on 220 compounds have shown that only 5 of the 220 chemicals exhibited toxic effects below 1,000 ppb. All 5 of the chemicals that were toxic at levels below 1,000 ppb were pesticides, compounds that would, based on their pesticidal activity, be expected to be more toxic than most substances (Ref. 5). However, even among these 5 pesticides, none exhibited toxic effects at dietary concentrations below 100 ppb.

Based on the results of these analyses, the agency believes that it is reasonable to expect that the noncarcinogenic toxic effects caused by the majority of unstudied compounds would be unlikely to occur below 1,000 ppb. To provide an adequate safety margin, however, the dietary concentration chosen as a level that presents no regulatory concern should be well below 1,000 ppb. Therefore, FDA is proposing in § 170.39(a)(2)(i) to establish a dietary concentration of 0.5 ppb as the threshold of regulation for substances used in food-contact articles. A 0.5 ppb threshold is 2,000 times lower than the dietary concentration at which the vast majority of studied compounds are likely to cause noncarcinogenic toxic effects and 200 times lower than the chronic exposure level at which potent pesticides induce toxic effects. FDA believes that these safety margins, which are larger than the 100 fold safety factor that is typically used in applying animal experimentation data to humans (21 CFR 170.22), support a conclusion that substances consumed in dietary concentrations at or below 0.5 ppb are not of regulatory concern. FDA considered the following additional factors in reaching its tentative decision to establish a 0.5 ppb dietary concentration level as the threshold of regulation:

(1) Because it is possible that a substance that has not been tested for carcinogenicity may later be found to be a carcinogen, FDA also has evaluated the likelihood of carcinogenic toxic effects associated with substances present in the diet at 0.5 ppb or less. FDA used potency data on a large number of known carcinogens to estimate the likely risk that could be expected if an unstudied compound were later found to be a carcinogen. These data were obtained from a carcinogenic potency data base, compiled by Gold et al. (Refs. 6 through 8), that included data on more than 3,500 long-term chronic animal studies of 975 chemicals. FDA restricted its analysis to the 477 animal carcinogens that were the subject of oral feeding studies showing a statistically significant increase in the incidence of animals with specific neoplasms ($p<0.01$) (Ref. 9).

FDA limited its analysis to oral feeding studies because the route of exposure to food additives is by ingestion. FDA further restricted its analysis to the 477 animal carcinogens that were the subject of oral feeding studies showing a statistically significant increase in the incidence of animals with specific neoplasms ($p<0.01$) to ensure that it considered only the most reliable studies. In those cases where multiple studies had been carried out on a specific chemical, the carcinogenic potency chosen represented the most sensitive species/sex/organ combination. Finally, in assessing the appropriate dietary concentration level to use as the threshold of regulation level, FDA has assumed that the distribution of carcinogenic potencies of the 477 chemicals studied is representative of all known and unknown carcinogens, and that it is very unlikely that an unstudied compound would both be a carcinogen and have an intrinsic carcinogenic potency far greater than the typical potency observed for the studied compounds.

Based on the range of potencies exhibited by these 477 animal carcinogens, FDA has determined that most known carcinogens pose less than one in a million lifetime risk if present in the daily diet at 0.5 ppb (Ref. 9). Therefore, FDA tentatively finds that establishing a 0.5 ppb dietary concentration level as the "threshold of regulation" for food-contact articles would result in negligible risk, even in the event that a substance that is exempted from regulation as a food additive were later shown to be a carcinogen.

(2) FDA also tentatively concludes that establishing a 0.5 ppb dietary concentration level as the threshold of regulation is appropriate because it corresponds to a migration level that is above the detection limit for many of the analytical methods used to quantify migrants from food-contact materials. Thus, decisions will usually be made based on dietary concentrations that result from measurable migration into food or food-simulating solvents rather than on worst-case estimates of dietary concentration based on the detection limits of the methods used in the analysis. For example, assuming a consumption factor[1] of 5 percent (the minimum value used by FDA in the absence of specific market volume data), a dietary concentration of 0.5 ppb corresponds to a migration level of 10 ppb. Although detection limits can vary considerably, the analytical methods used to detect migration of food-contact materials can seldom reliably quantify migrants below 1 to 2 ppb.

(3) FDA tentatively concludes that exempting from regulation as food additives those food-contact materials whose use results in dietary concentrations of 0.5 ppb or less is also consistent with the latitude given to FDA in the *Monsanto* v. *Kennedy* decision. The court ruled that in order for the "component" element of the food additive definition in section 201(s) of the act to be met, FDA would have to determine (with a fair degree of confidence) that a substance migrates into food in more than insignificant amounts. The court further stated that "* * * the Commissioner may determine, based on the evidence before him, that the level of migration into food of a particular substance is so negligible as to present no public health or safety concerns * * *." This authority derives from the administrative discretion, inherent in the statutory scheme, to deal appropriately with de minimis[2] situations.

Based on the study of the toxicological effects of a large number of chemicals that is discussed above, FDA tentatively concludes that the presence of a substance in the daily diet at or below 0.5 ppb is so negligible as to present no public health concerns. Therefore, FDA is proposing to adopt

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[1] The consumption factor for a food packaging material is that fraction of food in the diet that could be in contact with this material.

[2] This doctrine is expressed in Latin as de minimis non curat lex (the law does not concern itself with trifles).

this level as the threshold of regulation in § 170.39.

Known or suspected carcinogens would be excluded from review under the proposed regulation because the use of carcinogens as food additives is prohibited by the Delaney Clause (section 409(c)(3)(A) of the act). However, in *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984), the court stated that a food additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine if there is reasonable certainty that no harm will result from the use of the substance.

FDA has used risk assessment procedures to determine under what conditions a substance containing a carcinogenic impurity could be used in a food-contact article and pose no safety concerns. A widely used measure of a carcinogenic response in the scientific literature is the so-called "TD_{50}," that is, the feeding dose that causes cancer in 50 percent of test animals. FDA has calculated a theoretical TD_{50} threshold at which carcinogenic impurities would present less than a one in a million risk, a level of risk generally considered to be very low, when present in the diet at 0.5 ppb. In using these risk assessment procedures, FDA assumed a linear relationship between the feeding dose and the carcinogenic response. Based on a linear dose/response relationship, FDA determined that carcinogenic impurities that cause cancer in 50 percent of test animals at feeding levels above 6.25 milligrams (mg) per kilogram (kg) bodyweight per day (i.e., TD_{50} values above 6.25 mg/kg bodyweight/day) will pose less than a one in a million hypothetical upper-bound lifetime risk if present in the daily diet at levels of 0.5 ppb (Ref. 10). If a chemical with a TD_{50} value above 6.25 mg/kg bodyweight/day is present as an impurity in a substance that is exempted from regulation because its dietary concentration is 0.5 ppb or less, the level of the chemical in the diet as a result of the use of the exempted substance would obviously be considerably less than 0.5 ppb. Therefore, the hypothetical upper-bound lifetime risk of cancer from an impurity that is carcinogenic and that has a TD_{50} value greater than 6.25 mg/kg bodyweight/day would be expected to be well below one in a million and to pose effectively no safety concern.

Based on this risk assessment, FDA proposes to limit its review under proposed § 170.39 to those substances that have not been shown to be carcinogens and that do not contain carcinogenic impurities, unless the impurity has a TD_{50} value of more than 6.25 mg/kg bodyweight/day (proposed § 170.39(a)(1)).

FDA's tentative decision to only review substances known to contain carcinogenic impurities under the proposed regulation if the carcinogenic impurity is shown to have a TD_{50} value greater than 6.25 mg/kg bodyweight/day is conservative. However, FDA tentatively concludes that such conservatism is appropriate because of the limited showing that need be made for such substances. It will only be necessary to show that based on results reported in the scientific literature or on results of a chronic feeding study that has been previously reviewed by the agency, the TD_{50} value for the impurity exceeds the specified level. If such a showing is made, that is the end of the inquiry about the impurity. This approach is in marked contrast to FDA's review of petitions for food additives that appear to contain a carcinogenic impurity. In such cases, the agency carries out an in-depth review of the data to determine whether the impurity should be classified as a carcinogen. If FDA concludes that the impurity is a carcinogen, the agency uses risk assessment procedures to determine whether there is reasonable certainty that no harm will result from the use of the food additive containing the impurity. The quantitative risk assessment carried out by the agency is based on the cumulative dietary exposure to the carcinogenic impurity resulting from the intended use of the food additive under review and from other regulated uses of the additive. The carcinogenic potency used in the risk assessment is that estimated by the agency based on a thorough review of the data available on the carcinogenic impurity.

B. Selection of a Threshold of Regulation for the Use of Direct Food Additives in Food-contact Articles

As mentioned above, FDA has tentatively concluded that there are certain limited types of situations in which the use of a substance in a food-contact article that would result in a dietary concentration greater than 0.5 ppb should still qualify for an exemption from regulation as an indirect food additive. If a substance that is currently regulated for direct addition to food is intended to be used in a food-contact article, and if the dietary concentration of the substance resulting from the proposed indirect use is very small compared to the acceptable daily intake (ADI) for the substance based on data in FDA's files, the agency will consider granting an exemption from regulation for this use of the substance even if the dietary concentration will exceed 0.5 ppb. Because these substances will have already been the subject of acceptable safety studies that have established the level of use of the substance that is safe, FDA believes that the threshold for such substances can be established based not on a specific level of dietary concentration but on a specific percentage of the ADI, that is, 1 percent or less of the ADI for the substance (proposed § 170.39(a)(2)(ii)). This level of exposure would contribute only a small fraction of the ADI of a substance and would be well within the margin of safety for those direct food additives with small cumulative dietary exposures. For substances with high cumulative dietary exposures resulting from currently regulated direct food additive uses, a level of exposure that is 1 percent of the ADI would be within the margin of error for the estimated daily intake, which invariably is based on one or more worst-case assumptions, and would, therefore, not significantly affect the cumulative dietary exposure, even in the event that a particular substance has been granted exemptions for several different types of uses in food-contact articles.

IV. Process for Evaluating Requests for Exemption From Regulation as a Food Additive

FDA proposes to establish the following criteria to evaluate requests to exempt substances from regulation as food additives:

1. The substance must not have been shown to be a carcinogen in humans or animals and must not contain a carcinogenic impurity with a TD_{50} value of less than 6.25 mg/kg bodyweight/day, and there must be no reason, based on the chemical structure of the substance, to suspect that the substance is a carcinogen (proposed § 170.39(a)(1)). Known carcinogens would be excluded from review under the proposed regulation because the use of carcinogens as food additives is prohibited by the Delaney Clause (section 409(c)(3)(A) of the act).

2. The substance must: (a) Not migrate, and not be expected to migrate, into food at levels that result in dietary concentrations that are above 0.5 ppb, corresponding to dietary exposures above 1.5 micrograms/person/day (based on a diet of 1,500 grams of solid food and 1,500 grams of liquid food per

person per day)[3], and, therefore, not pose a public health or safety concern; or (b) be currently regulated for direct addition into food and be used in a manner that would result in exposure levels that are less than 1 percent of the ADI as determined by safety data in FDA files (proposed § 170.39(a)(2)).

3. The substance must have no technical effect in or on the food to which it migrates (proposed § 170.39(a)(3)). FDA tentatively finds that there is no basis on which to exempt a substance that is added directly or indirectly to food at a level at which it has a technical effect in that food.

4. The use of the substance must not have a significant adverse impact on the environment (proposed § 170.39(a)(4)).

To have the use of a substance in a food-contact article reviewed under this proposed regulation, a company would submit its request to the Division of Petition Control (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204 (proposed § 170.39(d)).

The agency recognizes that it is impossible to foresee all of the safety issues that may be revealed by scientific information not presently available. Therefore, in proposed § 170.39(b), FDA is reserving the right to decline to grant an exemption in any case where available information suggests that the proposed use of the substance may pose a public health risk.

Listed below is the information that FDA will need to determine whether an exemption is appropriate (proposed § 170.39(c)):

1. Information on the chemical composition of the substance (proposed § 170.39(c)(1)). This information is necessary to enable FDA to confirm the identity of the substance.

2. Detailed information on the conditions of use of the substance (e.g., temperature, types of food with which the substance will come into contact and the duration of the contact, repeat versus single use) (proposed § 170.39(c)(2)). Consistent with the legislative history of the Food Additives Amendment (S. Rept. 2422, 85th Cong. 2d sess. 2–3(1958)), any exemption for a specific substance issued under the proposed regulation will be for a specific use.

3. A clear statement of the basis for the request for exemption from regulation as a food additive (i.e., whether the use of the substance in the food-contact article results in a dietary concentration at or below 0.5 ppb, or whether it involves the use of a regulated direct food additive where the dietary exposure is less than 1 percent of the ADI) (proposed § 170.39(c)(3)).

4. Data that will enable FDA to estimate the daily dietary concentration resulting from the proposed use of the substance (proposed § 170.39(c)(4)). These data should be either in the form of: (a) Validated migration data obtained under worst-case (time/temperature) intended use conditions utilizing appropriate food-simulating solvents; (b) amounts of the substances used in the manufacture of the food-contact article; or (c) residual levels of the substances present in the food-contact article. For repeat-use articles, an estimate of the amount of food contacting a specific unit of surface area over the lifetime of the article should also be provided. In cases where data are provided only in the form of manufacturing use levels or residual levels of the substance present in the food-contact article, FDA will calculate a worst-case dietary concentration level assuming 100 percent migration. A detailed description of the analytical method used to quantify the substance should also be submitted along with data used to validate the detection limit.

In cases where there is no detectable migration into food or food simulants, or when no residual level of a substance is detected in the food-contact article by a suitable analytical method, FDA intends, for the purposes of estimating the dietary concentration, to consider the validated detection limit of the method used to analyze for the substance.

Interested persons are encouraged to obtain guidance from FDA on the appropriate protocols to be used for obtaining extraction data on the validation of the analytical methods used to quantify migration levels and on the procedures used to relate migration data to dietary exposures.

5. A literature search for toxicological data on the substance and its impurities (proposed § 170.39(c)(5)). This search is necessary to show whether an animal carcinogen bioassay has been carried out, or whether there is some other basis for suspecting that the substance is a carcinogen or a potent toxin.

6. Information on the environmental impact resulting from the proposed use of the substance (proposed § 170.39(c)(6)). Under the National Environmental Policy Act, FDA must consider the environmental effect of its actions, including each proposed action to exempt a component of a food-contact article from regulation as a food additive and include these considerations in its decisionmaking. This information should be in the form of an abbreviated environmental assessment as specified in § 25.31a (b)(1) or (b)(2) (21 CFR 25.31a (b)(1) or (b)(2)).

Upon completion of its review, FDA will inform the requestor by letter whether it is exempting the specific food-contact article from regulation as a food additive (proposed § 170.39(e)). FDA is proposing that these letters be issued by either the Director of FDA's Center for Food Safety and Applied Nutrition (CFSAN), the Director of CFSAN'S Office of Premarket Approval, or by the Directors of CFSAN's Divisions of Petition Control and Product Policy (proposed § 5.61(h)). FDA is proposing this delegation of authority because it expects a significant number of such requests, and officials other than the Commissioner should be able to respond to these to ensure the appropriate functioning of this system. Moreover, the determination will generally be based on a straightforward determination as to whether the threshold level is exceeded or not. Thus, delegation to officials other than the Commissioner is appropriate. If the request for an exemption from regulation as a food additive is not granted, the requestor may submit a petition to FDA for reconsideration of the decision in accordance with 21 CFR 10.33 *Administrative reconsideration of action* (proposed § 170.39(f)).

Although the uses of substances exempted under the proposed regulation will not be the subject of a regulation published in the Federal Register and will not appear in the Code of Federal Regulations, FDA is proposing that it will maintain a list of these exempted substances on display at the Dockets Management Branch (address above) (proposed § 170.39(e)). This list will include the name of the company that made the request, the chemical name of the exempted substance, the specific use for which it has been exempted, and any appropriate limitations. It will not include any trade names.

The agency's determination as to whether a substance used in a food-contact article meets the criteria established in the proposed regulation (§ 170.39) for an exemption from regulation as a food additive will be binding on the agency. Thus, manufacturers of food-contact articles can rely on these determinations and market their products without fear of regulatory action. However, if the

[3] A detailed description of FDA's method for calculating dietary exposure is included in "Recommendations for Chemistry Data for Indirect Food Additive Petitions" and can be obtained from the Division of Petition Control, Center for Food Safety and Applied Nutrition, Food and Drug Administration, Washington, DC 20204.

agency receives significant new information that raises questions about the dietary concentration level or the safety of a food-contact use of a substance that it has exempted from regulation, the agency may reconsider its decision (proposed § 170.39(g)). If FDA concludes that the available information no longer supports an exemption of the use of a food-contact material from the food additive regulations, the agency will notify the original requestor of its tentative decision. The requestor will be given an opportunity to show why regulation of the use of the substance as a food additive is not appropriate. If the requestor fails to adequately respond to the new evidence, the agency will advise the requestor that further use of the substance in question for the particular use will require a food additive regulation. This notification will be placed on public display at the Dockets Management Branch along with the file of those uses of substances exempted from regulation as food additives.

Because substances exempted from regulation as indirect food additives under the proposed regulation (§ 170.39) will not be required to undergo premarket approval through the submission of a food additive petition, FDA proposes to amend 21 CFR part 171 (proposed § 171.8) and 21 CFR part 174 (proposed § 174.6) to provide appropriate cross references to the proposed rule establishing a threshold of regulation for substances used in food-contact articles. FDA is also proposing to modify § 170.3(e) *Definitions* by adding new § 170.3(e)(2) to indicate that those food additives exempted from regulation under proposed § 170.39 will not be required to undergo premarket approval via the food additive petition process (21 CFR 171.1).

V. Economic Impact

FDA has examined the economic implications of the proposed rule establishing a threshold of regulation level for components of food-contact articles as required by Executive Order 12291 and the Regulatory Flexibility Act. Executive Order 12291 compels agencies to use cost-benefit analysis when making decisions. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA has also determined that this proposed rule will not have a significant adverse impact on a substantial number of small businesses.

The compliance cost to firms resulting from the proposed rule is zero, because no current activity is prohibited. Total costs are also zero because no increase in the health risks faced by consumers will result from this proposed rule. Benefits consist of agency resources saved by eliminating the need to consider food additive petitions for food-contact articles in cases involving trivial levels of migration from food-contact articles into food. Resources saved by eliminating this activity may be applied to the review of food additive petitions for food-contact articles in cases where significant migration into food may occur. By reducing the time required for the review of these petitions, the return to private investment in developing safe food-contact articles will be increased. This will lead to the more rapid development and utilization of these products. Because costs are zero and benefits are positive, net benefits will occur.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Under the National Environmental Policy Act, FDA must consider the environmental effect of its actions and include these considerations in its decisionmaking. This requirement extends to consideration of whether to exempt a component of a food-contact article from regulation as a food additive. The agency believes that almost all of the substances that would be reviewed under the proposed regulation will be minor components of finished food-packaging material that are present at less than 5-percent-by-weight or that will be used as components of food-contact surfaces of permanent or semipermanent equipment or of other food-contact articles intended for repeated use. The approval of a food additive petition for such substances would qualify for an abbreviated environmental assessment under § 25.31a(b)(1) and (b)(2). Because the environmental information needed for such substances is the same whether or not the substances are regulated as food additives, the agency is proposing to amend 21 CFR part 25 to require an abbreviated environmental assessment for substances that are considered for exemption from regulation as a food additive.

VII. Paperwork Reduction Act

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). Therefore, in accordance with 5 CFR part 1320, the title, description, and respondent description of the proposed collection of information requirements are shown below with an estimate of the annual collection and information burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering necessary information, and completion and submission of the request.

Title: Food additives; threshold of regulation for substances used in food-contact articles.

Description: FDA is proposing a regulation for determining when the likelihood/extent of migration of a component of a food-contact article is so trivial as not to require regulation as a food additive. A substance considered under this proposed rule would undergo an abbreviated review by FDA, as opposed to the extensive review and formal issuance of a regulation required for other food additives. The agency is proposing to establish § 170.39 as the procedural regulation for these types of reviews. This proposed regulation lists the criteria that must be met for a food-contact material to be reviewed under this policy and identifies the types of data that FDA will need for its review. A substance determined by FDA to be below the threshold of regulation would be exempt from regulation as a food additive and, therefore, would not require the submission of a food additive petition.

Description of Respondents: Businesses or other for-profit organizations.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
170.39	60	1	88	5,280
Total				5,280

Although requests submitted for review under the proposed regulation require an average burden of approximately 88 person hours, there will be a significant decrease in overall burden for those components of food-contact articles that are exempted by this expedited process but that previously would have required premarket approval via the food additive petition process. (Petitions on these types of issues can require 270 person hours to prepare and cost anywhere from $85,000 to $100,000.) There would also be a significant decrease in burden to FDA because these types of petitions typically require 250 to 500 person hours to review as compared to the 8 person hours that would be required to review a request under the proposed regulation.

In order to determine whether the proposed regulation (21 CFR 170.39) will significantly reduce the amount of resources that will need to be expended on indirect food additives, FDA analyzed the dietary concentration levels of substances that were the subject of indirect food additive petitions submitted over the last 5 years to determine what percent of these petitions would not have been submitted had the proposed provision been in place. Adhesive petitions seeking to amend 21 CFR 175.105 were not included because such uses involve the presence of a functional barrier between the adhesive component and food, and these petitions do not ordinarily contain migration data. FDA's analysis showed that 22 of the 163 petitions, or 13.5 percent involved dietary concentrations at or below 0.5 ppb and, they would have qualified for the exemption. These results suggest that there will be a significant savings in resources to both FDA and industry if this regulation is adopted.

The agency has submitted copies of the proposed rule to OMB for its review of these recordkeeping requirements. Interested persons are requested to send comments regarding this estimated burden, including suggestions for reducing this burden to FDA's Docket Management Branch (address above), and to the Office of Information and Regulatory Affairs, OMB, rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

VIII. Request for Comments

FDA invites public comment on all aspects of the agency's proposed regulations and is particularly requesting comments on the following:

1. The 0.5-ppb dietary concentration level that the agency proposes to establish as the threshold of regulation for those substances used in food-contact articles that are not currently regulated for direct addition into food and the 1 percent of the ADI threshold level proposed for regulated direct food additives.

2. The types of information that FDA should make publicly available regarding decisions made under this policy. FDA believes that it is essential that decisions made under this policy be made available to the public to the greatest extent possible. However, FDA recognizes its obligation to protect trade secret information and is interested in comments on how best to inform the public while protecting proprietary information.

Interested persons may, on or before December 13, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Briston, J. H., and L. L. Katan, "Plastics in Contact With Food," Food Trade Press Ltd., pp. 432–438, 1974.

2. FDA, "Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food," p. 10, 1982.

3. Munro, I., "Safety Assessment Procedures for Indirect Food Additives: An Overview," *Regulatory Toxicology and Pharmacology*, vol. 12, pp. 2–12, 1990.

4. Rulis, A., "Establishing a Threshold of Regulation" in "Risk Assessment in Setting National Priorities," Edited by Bonin, J., and D. Stevenson, Plenum Publishing Corp., pp. 271–278, 1989.

5. Frawley, J. P., "Scientific Evidence and Common Sense as a Basis for Food-Packaging Regulations," *Food and Cosmetic Toxicology*, vol. 5, pp. 293–308, 1967.

6. Gold, L. S. et al., "A Carcinogenesis Potency Database of the Standardized Results of Animal Bioassays," *Environmental Health Perspectives*, vol. 58, pp. 9–319, 1984.

7. Gold, L. S. et al., "Chronological Supplement to the Carcinogenic Potency Database: Standardized Results of Animal Bioassays Published Through December 1982," *Environmental Health Perspectives*, vol. 67, pp. 161–200, 1986.

8. Gold, L. S. et al., "Second Chronological Supplement to the Carcinogenic Potency Database: Standardized Results of Animal Bioassays Published Through December 1984 and by the National Toxicology Program through May 1986," *Environmental Health Perspectives*, vol. 74, pp. 237–329, 1987.

9. Rulis, A., "Threshold of Regulation: Options for Handling Minimal Risk Situations," in "Food Safety Assessment," Edited by Finley, J. W., S. F. Robinson, and D. J. Armstrong, American Chemical Society Symposium Series 484, pp. 132–139, 1992.

10. Machuga, E., "Review of Substances Containing Carcinogenic Impurities Under the Proposed Threshold of Regulation Policy," Memorandum for the File, December 14, 1992.

List of Subjects

21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

21 CFR Part 170

Administrative practice and procedure, Food additives, Reporting and recordkeeping requirements.

21 CFR Part 171

Administrative practice and procedure, Food additives.

21 CFR Part 174

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 5, 25, 170, 171, and 174 be amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u-300u-5, 300aa-1); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591.

2. Section 5.61 is amended by adding new paragraph (h) to read as follows:

§ 5.61 Food standards, food additives, generally recognized as safe (GRAS) substances, and color additives.

* * * * *

(h) The following officials are authorized to issue letters concerning substances determined to be below the threshold of regulation under § 170.39 of this chapter:

(1) The Director, Center for Food Safety and Applied Nutrition (CFSAN).

(2) The Director, Office of Premarket Approval, CFSAN.

(3) The Directors of the Divisions of Petition Control and Product Policy, Office of Premarket Approval, CFSAN.

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

3. The authority citation for 21 CFR part 25 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 351, 354–361 of the Public Health Service Act (42 U.S.C. 262, 263b-264); 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514 as amended by E.O. 11991; E.O. 12114.

4. Section 25.22 is amended by revising paragraph (a)(10) to read as follows:

§ 25.22 Actions requiring preparation of an environmental assessment.

* * * * *

(a)(10) Approval of food and color additive petitions, approval of requests for exemptions for investigational use of food additives, and granting of requests for exemption from regulation as a food additive.

* * * * *

5. Section 25.31a is amended by revising the introductory text of paragraphs (a), (b)(1), and (b)(2) to read as follows:

§ 25.31a Environmental assessment for proposed approvals of FDA-regulated products-Format 1.

(a) For proposed actions to approve food or color additives, drugs, biological products, animal drugs, and class III medical devices, for proposed actions to affirm food substances as generally recognized as safe (GRAS), and for proposed actions to grant requests for exemption from regulation as a food additive, the applicant or petitioner shall prepare an environmental assessment in the following format:

* * * * *

(b)(1) For actions (either to approve food additive petitions or to grant requests for exemption from regulation as a food additive) concerning components of food-contact articles present in the finished food-packaging material at a level not greater than 5-percent-by-weight, the following information is required for the format items specified:

* * * * *

(b)(2) For actions (either to approve food additive petitions or to grant requests for exemption from regulation as a food additive) concerning components of food-contact articles to be used in surfaces of permanent or semipermanent equipment or of other food-contact articles intended for repeated use, the following information is required for the items specified:

* * * * *

PART 170—FOOD ADDITIVES

6. The authority citation for 21 CFR part 170 continues to read as follows:

Authority: Secs. 201, 401, 402, 408, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 346a, 348, 371).

7. Section 170.3 is amended by redesignating paragraph (e) as (e)(1) and by adding new paragraph (e)(2) to read as follows:

§ 170.3 Definitions.

* * * * *

(e)(2) *Uses of food additives not requiring a listing regulation.* Substances used in food-contact articles (e.g., food-packaging and food-processing equipment) that migrate or may be expected to migrate into food at such negligible levels that they have been exempted from regulation as food additives under § 170.39.

* * * * *

8. New § 170.39 is added to subpart B to read as follows:

§ 170.39 Threshold of regulation for substances used in food-contact articles.

(a) A substance used in a food-contact article (e.g., food-packaging or food-processing equipment) that migrates, or that may be expected to migrate, into food will be exempted from regulation as a food additive because it becomes a component of food at levels that are below the threshold of regulation if:

(1) The substance has not been shown to be a carcinogen in humans or animals, does not contain a carcinogenic impurity or, if it does, does not contain a carcinogenic impurity with a TD_{50} value based on chronic feeding studies reported in the scientific literature, or otherwise available to the Food and Drug Administration, of less than 6.25 milligrams per kilogram bodyweight per day, and there is no reason, based on the chemical structure of the substance, to suspect that the substance is a carcinogen. (The TD_{50}, for the purposes of this regulation, is the feeding dose that causes cancer in 50 percent of the test animals. If more than one TD_{50} value has been reported in the scientific literature for a substance, the Food and Drug Administration will use the lowest TD_{50} value in its review.);

(2) The substance presents no other health or safety concerns because:

(i) The use in question has been shown to result in or may be expected to result in dietary concentrations at or below 0.5 parts per billion, corresponding to dietary exposure levels at or below 1.5 micrograms/person/day (based on a diet of 1,500 grams of solid food and 1,500 grams of liquid food per person per day); or

(ii) The substance is currently regulated for direct addition into food, and the dietary exposure to the substance resulting from the proposed use is less than 1 percent of the acceptable daily intake as determined by safety data in the Food and Drug Administration files;

(3) The substance has no technical effect in or on the food to which it migrates; and

(4) The substance use has no significant adverse impact on the environment.

(b) Notwithstanding paragraph (a) of this section, the Food and Drug Administration reserves the right to decline to grant an exemption in those cases in which available information establishes that the proposed use may pose a public health risk. The reasons

for the agency's decision to decline to grant an exemption will be explained in the Food and Drug Administration's response to the requestor.

(c) A request for the Food and Drug Administration to exempt a use of a substance from regulation as a food additive shall include the following information:

(1) The chemical composition of the substance for which the request is made;

(2) Detailed information on the conditions of use of the substance (e.g., temperature, type of food with which the substance will come into contact, the duration of the contact, and whether the food-contact article will be for repeated or single use applications);

(3) A clear statement as to whether the request for exemption from regulation as a food additive is based on the fact that the use of the substance in the food-contact article results in a dietary concentration at or below 0.5 ppb, or on the fact that it involves the use of a regulated direct food additive for which the dietary exposure is less than 1 percent of the acceptable dietary intake;

(4) Data that will enable the Food and Drug Administration to estimate the daily dietary concentration resulting from the proposed use of the substance. These data should be either in the form of:

(i) Validated migration data obtained under worst-case (time/temperature) intended use conditions utilizing appropriate food-simulating solvents;

(ii) Levels of the substances used in the manufacture of the food-contact article; or

(iii) Residual levels of the substances present in the food-contact article. For repeat-use articles, an estimate of the amount of food that contacts a specific unit of surface area over the lifetime of the article should also be provided. (In cases where data are provided only in the form of manufacturing use levels or residual levels of the substance present in the food-contact article, the Food and Drug Administration will calculate a worst-case dietary concentration level assuming 100 percent migration.) A detailed description of the analytical method used to quantify the substance should also be submitted along with data used to validate the detection limit.

(iv) In cases where there is no detectable migration into food or food stimulants, or when no residual level of a substance is detected in the food-contact article by a suitable analytical method, the Food and Drug Administration will, for the purposes of estimating the dietary concentration, consider the validated detection limit of the method used to analyze for the substance.

(v) Interested persons are encouraged to obtain guidance from the Food and Drug Administration on the appropriate protocols to be used for obtaining extraction data, on the validation of the analytical methods used to quantify migration levels, and on the procedures used to relate migration data to dietary exposures;

(5) The existing toxicological data on the substance and its impurities; and

(6) Information on the environmental impact that would result from the proposed use of the substance. Depending on the type of use, this information should be in the form of an abbreviated environmental assessment as specified in § 25.31a(b)(1) or (b)(2) of this chapter.

(d) Data to be reviewed under this section as well as any requests for guidance, shall be submitted to the Division of Petition Control (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

(e) The Food and Drug Administration will inform the requestor by letter whether the specific food-contact application is exempt from regulation as a food additive or not. Although a substance that migrates to food at a level that results in a dietary concentration at or below the threshold of regulation will not be the subject of a regulation published in the **Federal Register** and will not appear in the Code of Federal Regulations, the Food and Drug Administration will maintain a list of substances exempted from regulation as food additives under this regulation at the Dockets Management Branch. This list will include the name of the company that made the request, the chemical name of the substance, the specific use for which it has received an exemption from regulation as a food additive, and any appropriate limitations on its use. The list will not include any trade names. This list will enable interested persons to see the types of uses of food-contact materials being exempted under the regulation. The agency's finding of no significant environmental impact and the evidence supporting that finding, contained in an environmental assessment, also will be available for public inspection at the Dockets Management Branch in accordance with § 25.41(b)(2) of this chapter.

(f) If the request for an exemption from regulation as a food additive is not granted, the requestor may submit a petition to the Food and Drug Administration for reconsideration of the decision in accordance with the provisions of § 10.33 of this chapter.

(g) If the Food and Drug Administration receives significant new information that raises questions about the dietary concentration or the safety of a substance that the agency has exempted from regulation, the Food and Drug Administration may reconsider its decision. If the Food and Drug Administration concludes that the available information no longer supports an exemption of the use of the food-contact material from the food additive regulations, the agency will notify the original requestor of its tentative decision. The requestor will be given an opportunity to show why regulation of the use of the substance as a food additive is not appropriate. If the requestor fails to adequately respond to the new evidence, the agency will advise the requestor that further use of the substance in question for the particular use will require a food additive regulation. This notification will be placed on public display at the Dockets Management Branch along with the file of those uses of substances exempted from regulation as food additives.

PART 171—FOOD ADDITIVE PETITIONS

9. The authority citation for 21 CFR part 171 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

10. New § 171.8 is added to subpart A to read as follows:

§ 171.8 Threshold of regulation for substances used in food-contact articles.

Substances used in food-contact articles (e.g., food-packaging or food-processing equipment) that migrate or that may be expected to migrate into food at negligible levels may be reviewed under § 170.39 of this chapter. The Food and Drug Administration will exempt substances whose uses it determines meet the criteria in § 170.39 of this chapter from regulation as food additives and, therefore, a food additive petition will not be required for the exempted uses.

PART 174—INDIRECT FOOD ADDITIVES: GENERAL

11. The authority citation for 21 CFR part 174 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

12. New § 174.6 is added to read as follows:

§ 174.6 Threshold of regulation for substances used in food-contact articles.

Substances used in food-contact articles (e.g., food-packaging or food-

processing equipment) that migrate or that may be expected to migrate into food at negligible levels may be reviewed under § 170.39 of this chapter. The Food and Drug Administration will exempt substances whose uses it determines satisfy the criteria in § 170.39 of this chapter from regulation as food additives and, therefore, a food additive petition will not be required for the exempted uses.

David A. Kessler,

Commissioner of Food and Drugs.

Dated: August 30, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93–24940 Filed 10–8–93; 8:45 am]

BILLING CODE 4160–01–P

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21 CFR Part 814

[Docket No. 93N–0047]

Medical Devices; Temporary Suspension of Approval of a Premarket Approval Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish procedures to order the temporary suspension of a premarket approval application (PMA) for a medical device. This action implements a new authority granted to the agency by the Safe Medical Devices Act of 1990 (the SMDA). Under this new authority, if, after providing an opportunity for an informal hearing, FDA determines there is a reasonable probability that continued distribution of the device would cause serious, adverse health consequences or death, the agency shall by order temporarily suspend approval of the PMA and proceed expeditiously to withdraw the PMA.

DATES: Written comments by December 13, 1993. FDA intends that the final rule based on this proposal become effective 30 days after publication in the **Federal Register.**

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–84) Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4765.

SUPPLEMENTARY INFORMATION:

I. Legislative History

Section 9 of the SMDA (Pub. L. 101–629) amends section 515(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(e)) by adding section 515(e)(3) of the act to give the agency emergency authority to order the temporary suspension of approval of a PMA for a medical device pending the outcome of a proceeding to permanently withdraw the PMA.

The legislative history of the SMDA reflects congressional concern about allowing dangerous devices to remain on the market pending the outcome of the potentially time-consuming, permanent withdrawal proceedings under section 515(e)(1) of the act. (See S. Rept. 513, 101st Cong., 2d sess. 18–19 (1990).) To provide the agency with a quick method of removing dangerous devices from the market pending resolution of permanent withdrawal proceedings, Congress amended section 515(e) of the act to allow FDA to order the temporary suspension of a PMA without having to pursue a parallel proceeding in district court (id.).

Under section 515(e)(3) of the act, if, after providing an opportunity for an informal hearing, FDA determines there is "a reasonable probability" that continued distribution of the device would cause serious, adverse health consequences or death, the agency shall by order temporarily suspend approval of the PMA and proceed expeditiously to withdraw the PMA. The legislative history of section 515(e)(3) of the act states that a "reasonable probability" is "one where it is more likely than not that the event will occur." (id.). FDA emphasizes that the application of section 515(e)(3) of the act does not turn on the probability of whether a particular percentage of devices would cause serious adverse health consequences or death, but rather on the judgment that, if distribution of the devices continues, one or more individual devices would be more likely than not to cause serious adverse health consequences or death.

The legislative history also states that the term "serious, adverse health consequences" means:

> any significant adverse experience attributable to a device, including those which may be either life threatening, or involve permanent or long-term injuries, but excluding those non-life-threatening injuries which are temporary and reasonably reversible. In other words, injuries attributable to a device that are not significant in nature and are treatable and reversible by standard medical techniques, proximate in time to the injury, are not included within the term's definition. (id.)

The legislative history clearly indicates congressional intent that FDA will have "considerable discretion" in determining whether the standard required for the issuance of a temporary suspension order has been met (id.).

Under section 515(e)(3) of the act (21 U.S.C. 360e(e)(3)), before FDA may order the temporary suspension of a PMA, the agency must provide the PMA holder with an opportunity for an "informal hearing." The SMDA does not require FDA to issue regulations to implement the temporary suspension provision of section 515(e)(3) of the act. FDA, however, believes that regulations would serve to define certain terms related to temporary suspensions and establish and clarify the procedures the agency intends to follow in exercising its authority under section 515(e)(3) of the act.

II. Contents of the Proposed Regulation

The proposed regulation amends 21 CFR part 814 by adding § 814.3(k) and (l) to include definitions of the terms "reasonable probability" and "serious, adverse health consequences," respectively. The proposed definitions of these two terms conform to the definitions of these terms in the legislative history.

The proposed regulation also adds § 814.47 Temporary suspension of approval of a PMA. Proposed § 814.47 states the scope of the regulation authorizing FDA to issue an order temporarily suspending approval of a PMA, establishes procedures for issuing a temporary suspension order, and sets out the standard for temporarily suspending approval of a PMA.

Proposed § 814.47(a) describes the scope of this proposed rule. FDA would follow the procedures set out in proposed § 814.47 when the agency believes that there is a reasonable probability that continued distribution of the device would cause serious, adverse health consequences or death.

Proposed § 814.47(b) describes the procedures that FDA would follow in providing the PMA holder with an opportunity for a regulatory hearing before the agency decides whether to issue an order temporarily suspending approval of the PMA.

Under proposed § 814.47(b)(1), if FDA believes that there is a reasonable probability that the continued distribution of a device subject to an approved PMA would cause serious, adverse health consequences or death, FDA may initiate and conduct a regulatory hearing to determine whether to temporarily suspend approval of the PMA. Proposed § 814.47(b)(2) makes clear that any regulatory hearing to

determine whether to issue an order temporarily suspending the approval of a PMA would be initiated and conducted by FDA pursuant to 21 CFR part 16. If FDA believes that immediate action to remove a dangerous device from the market is necessary to protect the public health, 21 CFR 16.60(h) provides that the agency may waive, suspend, or modify any part 16 procedure pursuant to 21 CFR 10.19. For example, FDA may require that the PMA holder submit a request for a hearing on the same day on which the PMA holder receives the notice of opportunity for hearing. FDA may then conduct the hearing and render the decision on this same day. In such a case, FDA would waive the last sentence of 21 CFR 16.24(e) that states that a hearing may not be required to be held at a time less than 2 working days after receipt of the request for a hearing. This provision reflects congressional intent that, for temporary suspension actions, the informal hearing, when necessary, should be analogous to a temporary restraining order hearing that could result in notice, a hearing, and a judicial decision in a single day. (See H. Rept. 808, 101st Cong., 2d sess. 29 (1990).)

Proposed § 814.47(b)(3) provides that FDA would deem the PMA holder's failure to request a hearing within the timeframe specified by FDA in the notice of opportunity for hearing to be waiver of an opportunity for a hearing.

Under proposed § 814.47(c), if the PMA holder does not request a regulatory hearing or if, after the hearing and after consideration of the administrative record of the hearing, FDA determines that there is a reasonable probability that the continued distribution of a device under an approved PMA would cause serious, adverse health consequences or death, the agency would, under the authority of section 515(e)(3) of the act, issue an order to the PMA holder temporarily suspending approval of the PMA.

Under proposed § 814.47(d), if FDA issues an order temporarily suspending approval of a PMA, the agency must proceed expeditiously to withdraw the PMA in accordance with section 515(e)(1) of the act and the procedures set out in 21 CFR 814.46. This requirement conforms the proposed regulation to the statutory requirement in the last sentence in section 515(e)(3) of the act.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

FDA estimates that the potential cost to holders of PMA's that are temporarily suspended pending agency action to complete proceedings to withdraw the PMA's is $20,000 annually. This figure represents the potential cost of responding to the agency's notice of opportunity for an informal hearing. FDA anticipates no more than two such responses annually, with a maximum estimated cost of $10,000 each. There will also be a loss of sales to the individual company. The loss would vary greatly depending on the device and cannot be estimated. The benefit of this rule is that dangerous devices will be removed from the market quickly rather than allowing them to remain on the market until after the completion of potentially lengthy permanent withdrawal proceedings.

The agency does not anticipate any other significant additional costs of compliance. Therefore, FDA certifies that this proposed rule requires neither a regulatory impact analysis, as specified in Executive Order 12291, nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354).

V. Comments

Interested persons may, on or before December 13, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 814 be amended as follows:

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

1. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: Secs. 501, 502, 503, 510, 513–520, 701, 702, 703, 704, 705, 706, 708, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 376, 379, 381).

2. Section 814.3 is amended by adding paragraphs (k) and (l) to read as follows:

§ 814.3 Definitions.

* * * * *

(k) Reasonable probability means that it is more likely than not that an event will occur.

(l) Serious, adverse health consequences means any significant adverse experience, including those which may be either life-threatening or involve permanent or long range injuries, but excluding injuries that are not life-threatening and that are temporary and reasonably reversible. Injuries attributable to a device that are treatable and reversible by standard medical techniques, proximate in time to the injury, are not included within the term's definition.

3. Section 814.47 is added to subpart C to read as follows:

§ 814.47 Temporary suspension of approval of a PMA.

(a) *Scope.* (1) This section describes the procedures that FDA will follow in exercising its authority under section 515(e)(3) of the act (21 U.S.C. 360e(e)(3)).

(2) FDA will issue an order temporarily suspending approval of a PMA if FDA determines that there is a reasonable probability that continued distribution of the device would cause serious, adverse health consequences or death.

(b) *Regulatory hearing.* (1) If FDA believes that there is a reasonable probability that the continued distribution of a device subject to an approved PMA would cause serious, adverse health consequences or death, FDA may initiate and conduct a regulatory hearing to determine whether to issue an order temporarily suspending approval of the PMA.

(2) Any regulatory hearing to determine whether to issue an order temporarily suspending approval of a PMA shall be initiated and conducted by FDA pursuant to part 16 of this chapter. As provided for in § 16.60(h) of this chapter, if FDA believes that immediate action to remove a dangerous device from the market is necessary to protect the public health, the agency may waive, suspend, or modify any part 16 procedure pursuant to § 10.19 of this chapter.

(3) FDA shall deem the PMA holder's failure to request a hearing within the timeframe specified by FDA in the

notice of opportunity for hearing to be a waiver of an opportunity for a hearing.

(c) *Temporary suspension order.* If the PMA holder does not request a regulatory hearing or if, after the hearing, and after consideration of the administrative record of the hearing, FDA determines that there is a reasonable probability that the continued distribution of a device under an approved PMA would cause serious, adverse health consequences or death, the agency shall, under the authority of section 515(e)(3) of the act, issue an order to the PMA holder temporarily suspending approval of the PMA.

(d) *Withdrawal of the PMA.* If FDA issues an order temporarily suspending approval of a PMA, the agency shall proceed expeditiously to withdraw the PMA in accordance with section 515(e)(1) of the act and the procedures set out in § 814.46.

Dated: July 22, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–24939 Filed 10–8–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250, 256, 280, and 281

RIN 1010–AB63

Archaeological Resource Surveys and Reports on Outer Continental Shelf Lease Tracts

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulatory program of the Minerals Management Service (MMS) to state specifically the authority of MMS to require lessees or operators to conduct archaeological resource surveys and submit reports prior to exploration, development and production, or installation of lease term or right-of-way pipelines. This rule also proposes to standardize the definition and use of the term "archaeological resources" within MMS's regulatory program. This action serves to notify the public of the changes that MMS is proposing and to solicit views on the subject.

DATES: Comments must be received or postmarked by December 13, 1993.

ADDRESSES: Comments should be mailed or hand-carried to the Department of the Interior; Minerals Management Service, Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817, Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, Engineering and Standards Branch; Minerals Management Service, Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817, or telephone (703) 787–1600 or (FTS) 8–703–787–1600.

SUPPLEMENTARY INFORMATION: Since 1973, the Department of the Interior (DOI) has included a stipulation on the Outer Continental Shelf (OCS) mineral lease tracts to notify potential lessees that, where applicable, archaeological resource surveys and reports will be required. Lessees and operators have, since that time, submitted this information when the stipulation was invoked by MMS.

The authority to require this information was identified, in a general fashion, in a final rule published by MMS in the **Federal Register** on April 1, 1988 (53 FR 10596). That rule granted authority to MMS Regions to ensure safety and environmental protection by requiring OCS lessees and operators to conduct needed surveys and submit reports when seeking approval of their plans to explore or develop and produce hydrocarbons or to install lease term or right-of-way pipelines.

This proposed amendment grants specific authority to each MMS Regional Director to require archaeological resource surveys and reports.

The proposed rule also makes minor modifications in 30 CFR parts 256 and 280 to standardize the use of the term "archaeological resource," eliminates use of other terms such as "cultural resources," and provides a uniform definition.

Author

This document was prepared by Jeff Wiese, Operations and Safety Management and Kumkum Ray, Engineering and Standards Branch, MMS.

Executive Order (E.O.) 12291

The DOI has determined that this document does not constitute a major rule under E.O. 12291 because: (1) It will not have an annual effect on the economy of $100 million or more, (2) it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and (3) it will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete in domestic or export markets. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The DOI has determined that this proposed rule will not have a significant economic effect on a substantial number of small entities. Any direct effects of this rulemaking will primarily affect OCS lessees and operators—entities that are not, by definition, small due to the technical complexities and financial resources necessary to conduct OCS activities. The indirect effects of this rulemaking on small entities that provide support for offshore activities have also been determined to be small.

Paperwork Reduction Act

The information collection requirements contained in those parts of MMS's regulatory program affected by this rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and have been assigned OMB clearance numbers 1010–0057 and 1010–0050.

Takings Implication Assessment

The DOI certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected rights. A Takings Implication Assessment prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights, is not required.

E.O. No. 12778

The Department has certified to the Office of Management and Budget that this proposed regulation meets the applicable standards provided in Sections 2(a) and 2(b)(2) of E.O. 12778.

National Environmental Policy Act

The MMS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

30 CFR Part 280

Administrative practice and procedure, Bonds, Continental shelf, Environmental protection, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 281

Administrative practice and procedure, Bonds, Continental shelf, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: August 20, 1993.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 250, 256, 280, and 281 are proposed to be amended as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: Sec. 204, Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. Section 250.2 is amended by adding the following definition, in alphabetical order, to read as follows:

§ 250.2 Definitions.

* * * * *

Archaeological resource means any prehistoric or historic district, site, building, structure, or object (including shipwrecks). The term includes artifacts, records, and remains that are related to such a district, site building, structure, or object.

* * * * *

3. A new § 250.26 is added to subpart A to read as follows:

§ 250.26 Archaeological reports and surveys.

(a) If the Regional Director believes that an archaeological resource may exist in the lease area, the Regional Director will notify the lessee in writing. The lessee shall then comply with the following:

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the Regional Director, to determine the potential existence of any archaeological resource that may be affected by operations. The report shall be prepared by an archaeologist and geophysicist and shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the Regional Director for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to affect adversely the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the Regional Director that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the Regional Director. A report on the investigation shall be submitted to the Regional Director for review.

(3) If the Regional Director determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the Regional Director will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the Regional Director has told the lessee how to protect it.

(b) If the lessee discovers any archaeological resource while conducting operations in the lease area, the lessee shall report the discovery immediately to the Regional Director. The lessee shall make every reasonable effort to preserve the archaeological resource until the Regional Director has told the lessee how to protect it.

4. Section 250.33 is amended by revising paragraphs (b)(15) and (o) to read as follows:

§ 250.33 Exploration Plan.

* * * * *

(b) * * *

(15) Archaeological resources (including any archaeological resource reports or survey information required by the Regional Director and not previously submitted) located within the area that may be disturbed by the proposed activities.

* * * * *

(o) To ensure safety and protection of the environment and archaeological resources, the Regional Director may authorize or direct the lessee to conduct geological, geophysical, biological, archaeological, or other surveys or monitoring programs. The lessee shall provide the Regional Director, upon request, with copies of any data obtained as a result of those surveys and monitoring programs.

* * * * *

5. Section 250.34 is amended by revising paragraphs (b)(8)(v)(A) and (s) to read as follows:

§ 250.34 Development and Production Plan.

* * * * *

(b) * * *

(8) * * *

(v) * * *

(A) Archaeological resources (including any archaeological resource reports or survey information required by the Regional Director and not previously submitted) located within the area that may be disturbed by the proposed activities.

* * * * *

(s) To ensure safety and protection of the environment and archaeological resources, the Regional Director may authorize or direct the lessee to conduct geological, geophysical, biological, archaeological, or other surveys or monitoring programs. The lessee shall provide the Regional Director, upon request, copies of any data obtained as a result of those surveys and monitoring programs.

* * * * *

6. Section 250.157 is amended by revising paragraph (a)(5) to read as follows:

§ 250.157 Applications.

(a) * * *

(5) The application shall include a shallow hazards survey report and, if required by the Regional Director, an archaeological resource report that covers the entire length of the pipeline. A shallow hazards analysis may be included in a lease term pipeline application in lieu of the shallow hazards survey report with the approval of the Regional Director. The Regional Director may require the submission of the data upon which the report or analysis is based.

* * * * *

7. Section 250.159 is amended by revising paragraph (c)(4) to read as follows:

§ 250.159 General requirements for a pipeline right-of-way grant.

* * * * *

(c) * * *

(4) If an archaeological resource should be discovered during the conduct of any operations within the right-of-way, the right-of-way holder shall immediately report such findings to the Regional Director and make every

reasonable effort to preserve and protect the archaeological resource from damage until the Regional Director has told the lessee how to protect it.

* * * * *

PART 256—OUTER CONTINENTAL SHELF MINERALS AND RIGHTS-OF-WAY MANAGEMENT, GENERAL

8. The authority citation for part 256 continues to read as follows:

Authority: Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the OCS Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629.

9. Section 256.23 is amended by revising the last sentence in paragraph (b) to read as follows:

§ 256.23 Information on areas.

* * * * *

(b) * * * For an oil and gas lease sale Call Area, the Director may request comments concerning geological conditions, including bottom hazards; archaeological sites on the seabed or nearshore; multiple uses of the proposed leasing area, including navigation, recreation, and fisheries; and other socioeconomic, biological, and environmental information.

PART 280—PROSPECTING FOR MINERALS OTHER THAN OIL, GAS, AND SULFUR IN THE OUTER CONTINENTAL SHELF

10. The authority citation for part 280 continues to read as follows:

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, National Environmental Policy Act of 1969, 42 U.S.C. 4332 *et seq.*

11. Section 280.2 is amended by revising the definition of "archaeological resource" to read as follows:

§ 280.2 Definitions.

* * * * *

Archaeological resource means any prehistoric or historic district, site, building, structure, or object (including shipwrecks). This term includes artifacts, records, and remains that are related to such a district, site, building, structure, or object.

* * * * *

PART 281—LEASING OF MINERALS OTHER THAN OIL, GAS, AND SULFUR IN THE OUTER CONTINENTAL SHELF

12. The authority citation for part 281 continues to read as follows:

Authority: Outer Continental Shelf Lands Act 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629.

§ 281.12 [Amended]

13. In § 281.12, paragraph (c) is amended by removing the word "archeological" and adding in its place the word "archaeological."

[FR Doc. 93–24966 Filed 10–8–93; 8:45 am]

BILLING CODE 4310–MR–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–257, RM–8327]

Radio Broadcasting Services; Glasgow, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Henry Royse seeking the allotment of Channel 231A to Glasgow, Kentucky, as that community's fourth local aural transmission service. Channel 231A can be allotted to Glasgow in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.9 kilometers (2.4 miles) southeast, in order to avoid a short-spacing to a construction permit for Station WHIC (FM), Channel 232C2, Hardinsburg, Kentucky. The coordinates for Channel 231A at Glasgow are North Latitude 36–57–41 and West Longitude 85–54–19.

DATES: Comments must be filed on or before November 18, 1993, and reply comments on or before December 3, 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: Henry Royse, Box, 1628, Glasgow, Kentucky 42142 (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 Rule Making, MM Docket No. 93–257, adopted September 21, 1993, and released September 30, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93–24854 Filed 10–8–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–258, RM–8253]

Radio Broadcasting Services; Hawaiian Ocean View Estates, Hawaii

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by James Stonecipher seeking the allotment of Channel 273A to Hawaiian Ocean View Estates, Hawaii, as that community's first local aural transmission service. Channel 273A can be allotted to Hawaiian Ocean View in compliance with the Commission's minimum distance separation requirements. The coordinates for Channel 273A at Hawaiian Ocean View Estates are North Latitude 19–05–37 and West Longitude 155–46–43.

DATES: Comments must be filed on or before November 18, 1993, and reply comments on or before December 3, 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: Dan A. Alpert, 1250 Connecticut Avenue NW., #700, Washington, DC 20036 (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 Rule Making, MM Docket No. 93–258, adopted September 17, 1993, and released September 30, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93–24851 Filed 10–8–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–256, RM–8326]

Radio Broadcasting Services; Taylorville, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Miller Communications, Inc. seeking the allotment of Channel 232A to Taylorville, Illinois, as that community's second local aural transmission service. Channel 232A can be allotted to Taylorville in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.2 kilometers (4.5 miles) south, in order to avoid short-spacings to the licensed sites of Station WRMS (FM), Channel 232A, Beardstown, Illinois and Station WLRW (FM), Channel 233B, Champaign, Illinois. The coordinates for Channel 232A at Taylorville are North Latitude 39–29–22 and West Longitude 89–19–45.

DATES: Comments must be filed on or before November 18, 1993, and reply comments on or before December 3, 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 Rule Making, MM Docket No. 93–256, adopted September 20, 1993, and released September 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230), 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93–24853 Filed 10–8–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–255, RM–8322]

Radio Broadcasting Services; Titusville, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Southern Starr Limited Partnership, licensee of Station WGNE (FM), Channel 251C2, Titusville, Florida, seeking the substitution of Channel 251C1 for Channel 251C2 at Titusville, and modification of its license to specify the higher class channel. Channel 251C1 can be substituted for Channel 251C2 at Titusville with a site restriction of 23.6 kilometers (14.6 miles) southeast of the community. The coordinates for Channel 251C1 at Titusville are North Latitude 28–35–00 and West Longitude 80–34–10.

DATES: Comments must be filed on or before November 18, 1993, and reply comments on or before December 3, 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: Bradford D. Carey, Hardy & Carey, 111 Veterans Blvd., suite 255, Metairie, LA 70005 (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 Rule Making, MM Docket No. 93–255, adopted September 22, 1993, and released September 30, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

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

[FR Doc. 93–24852 Filed 10–8–93; 8:45 a.m.]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–259, Rm–8341]

Radio Broadcasting Services; Earle, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed on behalf of Earle Broadcasting, requesting the allotment of FM Channel 234C3 to Earle, Arkansas, as that community's first local aural transmission service. Coordinates used for this proposal are 35–18–46 and 90–33–04.

DATES: Comments must be filed on or before November 18, 1993, and reply comments on or before December 3, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Riley M. Murphy, Esq., 1100 Poydras Street, suite 2590, New Orleans, LA 70163–2590.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 93–259, adopted September 17, 1993, and released September 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239) 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 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.

Victoria M. McCauley,

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

[FR Doc. 93–24849 Filed 10–8–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–250, RM–8331]

Radio Broadcasting Services; Fairview, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission request comments on a petition filed by KDC, Inc. seeking the allotment of Channel 298A to Fairview, Pennsylvania, as the community's first local aural transmission service. Channel 298A can be allotted to Fairview in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction, at coordinates North Latitude 42–01–48 and West Longitude 80–15–12. The allotment would be short-spaced to vacant Channel 298A, Welland, Ontario, and Channel 298A, Stratford, Ontario, Canada. However, the staff has determined that the Fairview station can limit its power in the direction of these two communities so as to avoid any prohibited overlap. Canadian concurrence is required since Fairview is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before November 18, 1993, and reply comments on or before December 3, 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: Allan G. Moskowitz, Esq., Kaye, Scholer, Fierman, Hays & Handler, The McPherson Building, 901 Fifteenth Street, NW., suite 1100, Washington, DC 20005–2327 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–250, adopted September 17, 1993, and released September 30, 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 contractor, International Transcription Services, Inc., (202) 857–3800, 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 Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involved 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.

Victoria M. McCauley,

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

[FR Doc. 93–24850 Filed 10–8–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

[Docket 49173; Notice 93–21]

RIN 2105–AC00

Transportation for Individuals With Disabilities; Accessibility of Over-the-Road Buses

AGENCY: Office of the Secretary, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Department is seeking responses to a number of questions concerning requirements for the accessibility of over-the-road buses (OTRBs). Recently, the Office of Technology Assessment (OTA) issued a report on this subject, which the Department is required to consider as it drafts OTRB access rules. Before making regulatory proposals, the Department wishes to receive the views of interested persons on issues raised by the OTA report and the Department's thinking about OTRB accessibility.

DATES: Comments are requested by November 26, 1993. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. 49173, Department of Transportation, 400 7th Street, SW., room 4107, Washington, DC, 20590. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC, 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD), or Ira Laster, Office of Transportation Regulatory Affairs, same street address, room 9217, (202) 366–4859.

SUPPLEMENTARY INFORMATION:

Rulemaking Process

This ANPRM is the first of several actions that are intended to result, by May 16, 1994, in the issuance of final Department of Transportation (DOT) rules and final Architectural and Transportation Barriers Compliance Board (Access Board) accessibility guidelines to implement Americans with Disabilities Act (ADA) requirements that apply to OTRBs. The next action will be a workshop, sponsored jointly by the two agencies, to bring key parties together to discuss issues related to OTRB accessibility. This workshop, which will be open to the public, will take place October 21–22, 1993, in the third floor training room of the President's Committee on Employment of People with Disabilities. The address of the President's Committee's offices is 1331 F. Street, NW., Washington, DC 20004–1107.

The two agencies have tentatively scheduled for January 1994 the publication of a joint notice of proposed rulemaking (NPRM) to propose guidelines and standards for accessible OTRBs. The Department also tentatively plans to publish a separate NPRM concerning OTRB service requirements in January 1994. Following the review of comments, the agencies intend to publish final rules based on each of these NPRMs in May 1994.

Statutory Requirements

For purposes of the Americans with Disabilities Act (ADA), an OTRB is "a bus characterized by an elevated passenger deck located over a baggage compartment" (sec. 301(5)). The Department's ADA regulation (49 CFR 37.3) repeats this definition without change. OTRBs are a familiar type of bus used by Greyhound and other fixed-route intercity bus carriers as well as charter and tour operators.

Section 304(b)(3) of the ADA requires private providers of specified public transportation service who are primarily engaged in the business of transporting people, and whose operations affect commerce, to purchase accessible vehicles in certain circumstances. Under this section, most new vehicles—but not OTRBs—purchased for use in fixed route service must be accessible to individuals with disabilities, including wheelchair users. If a new vehicle subject to the requirements of section 304(b)(3) is to be used in demand responsive service, the entity may purchase an inaccessible vehicle if the provider's system, when viewed in its entirety, provides a level of service to individuals with disabilities, including wheelchair users, that is equivalent to the level of service provided to the general public. The requirements of section 304(b)(3) do not apply, in any case, to used vehicles.

Instead of being subject to section 304(b)(3), OTRBs are covered by section 304(b)(4)(A). This provision prohibits "the purchase or lease by such entity [i.e., a private entity primarily engaged in the business of transporting people and whose operations affect commerce] of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2)." (Section 302(b)(2)(D)(ii)(I) of the ADA applies this same requirement to private entities who are not primarily engaged in the business of transporting people. None of the provisions under discussion apply to public entities, whose vehicle purchases—whether of OTRBs or other buses—must be accessible as provided in Title II of the ADA.)

Section 306(a)(2) requires the Department to issue two sets of regulations—interim requirements and final requirements—concerning OTRB service. The interim requirements must "require each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus." However, the interim rule may not require either structural changes in buses to provide accessibility to wheelchair users or the purchase of boarding assistance devices. The Department's September 6, 1991, ADA rule established these interim requirements (49 CFR section 37.169). The interim requirements, which are now in effect, require boarding assistance and accommodation of wheelchairs for passengers with mobility impairments.

In section 305 of the ADA, Congress directed the Office of Technology Assessment (OTA) to study

(1) The access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and

(2) The most cost-effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, through all forms of boarding options.

The contents of the study were to include the demand for OTRB service by individuals with disabilities, the degree to which such service was already accessible, the effectiveness of various methods of providing accessibility, the cost of providing accessible buses and service, possible design changes (including restrooms that do not result in a loss of seating capacity), and the impact of accessible service on the continuation of over-the-road service, especially to rural communities. OTA published its study on May 16, 1993.

Section 306(a)(2)(B) provides that not later than one year after the date of the OTA study, the Department must issue regulations to carry out sections 304(b)(4) and 302(b)(2)(D)(ii), cited above. These final requirements, "taking into account the purposes of the study under section 305 and any recommendations resulting from such study, [shall require] each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs." The statute does not permit the regulations to require the installation of restrooms in OTRBs if doing so would result in a loss of seating capacity.

The purpose of this ANPRM is to seek information from interested persons about a variety of questions and issues that the Department must face as it devises regulations to comply with section 306(a)(2)(B).

The OTA Study

Persons who want a copy of the complete OTA report (entitled "Access to Over-the-Road Buses for Persons with Disabilities," S/N 052–003–01320–7) may obtain it from

New Orders
Superintendent of Public Documents
P.O. Box 371954
Pittsburgh, PA 15250–7954

The cost of the publication is $9.00 (international customers must add 25 percent). The Superintendent of Public Documents accepts payment by check, Government Printing Office Deposit Account, or Visa or MasterCard. For the information of readers, we are reprinting below an extract from the text of the Executive Summary of the OTA study.

In Congressional debate over the ADA, particular difficulty developed around the issue of access for individuals with disabilities to transportation on buses with a high passenger deck, otherwise known as over-the-road buses (OTRBs). OTRBs are most often used in scheduled service that takes passengers from city to city, or on local and regional tours and charter trips. Uncertain about the feasibility and cost of OTRB accessibility technologies, Congress was concerned that the burden of implementing the ADA might cripple an already struggling industry, and thus cause the loss of intercity, charter, and tour bus service for many citizens. To ensure that regulations issued by the U.S. Department of Transportation (DOT) would be based on accurate, objective information, and fully reflect the needs of both the bus industry and the disability community, Congress directed the Office of Technology Assessment (OTA) to study this issue, with emphasis on the demand for accessible OTRB service, current and potential technologies, costs of implementation, and impact on the industry.

There are no simple answers to the issue of access to OTRBs. OTA identified a number of positive factors, however, that could lead to workable solutions. A variety of technologies are now available and more are under development. Even more important are the desire by the industry to provide accessible service, the willingness by disability communities to be part of a good-faith process that may take years to reach full accessibility, and the growing understanding by all participants that implementation of the ADA will mean devising specific strategies over time to meet specific needs.

Regulatory Milestones

Within 1 year of the release of this study, DOT must issue regulations to inform OTRB operators to their compliance obligations under the ADA. These regulations take effect for large operators in July 1996 and for small operators in July 1997, although the President may delay implementation for up to 1 year. The conclusions of this OTA study, provided to Congress and DOT, can inform and support DOT in this regulatory process.

What Is an Accessible OTRB?

OTA defines an accessible OTRB as one that allows persons with disabilities to board and, where applicable, remain with their wheelchair or other mobility aid while riding, with only minimal assistance from bus company personnel. Accessible OTRBs have

- Access to level-change devices, including lifts or ramps. An OTRB without an onboard level-change device is accessible only if it operates primarily at stops equipped with level-change devices.
- A sufficiently wide door to accommodate persons with mobility impairments.
- Two wheelchair tie-downs to secure wheelchairs and their users.
- Movable arm rests on some aisle seats.
- A means to communicate with persons who have sensory and cognitive impairments, both on and off the bus.
- An accessible restroom or operational provisions for use of accessible restroom facilities.
- Personnel trained in both equipment use and people skills (already a requirement under DOT regulations).

How Might Accessible Service Be Implemented?

The ADA specifies that accessibility is phased in as OTRBs are purchased or leased by private transportation providers; no retrofitting of vehicles is required. Since the lifetime of an OTRB can exceed 20 years, operators may take that long or longer to turn over their fleets and complete the phase in of accessible OTRBs. Several variables will affect the process:

- OTRB service providers may choose between vehicle-based and station-based level-change devices as best suits their service patterns. However, more complicated regulatory strategies will be required for the station-based lift approach, because a bus without a level-change device onboard is only accessible when it is at a station with a level-change device.
- Available technologies can provide reliable access. Over time, design and production will lead to technological improvements and reduced costs. New designs are under development.
- The area in which technology is least able to offer help at present is that of accessible onboard restrooms. However, access to restrooms is an important aspect of accessible service, and OTRB operators who choose not to equip vehicles with accessible restrooms must respond to this need in some way, presumably with suitably frequent stops at accessible facilities.
- The ADA imposes different standards on "fixed-route" and "demand-responsive" transportation services. OTRBs in fixed-route service follow set schedules; demand-responsive charter and tour services do not. All OTRBs purchased or leased for fixed-route service must be accessible, but demand-responsive OTRB systems can meet ADA standards by providing enough accessible OTRBs to accommodate the demand.
- Reservation systems can hasten the implementation of accessible service before OTRB systems are fully accessible, by allowing passengers to notify companies of special needs and by providing advance notice to make accessible equipment available. However, the ADA forbids the use of reservation systems primarily for persons with disabilities; reservation systems must serve all riders.
- Companies without a reservation system can begin compliance by publishing schedules with designations of routes and times that are served by accessible vehicles, and, for the routes and times that are not accessible, the company can specify that persons call, for example, 24 hours in advance if, and only if, they need boarding assistance.

How Much Will It Cost?

- OTA calculates that the additional cost for one new OTRB to be outfitted with accessibility technologies and operated over its entire lifetime (of roughly 20 years) ranges from $18,000 to $40,000, or approximately 1 percent of the total lifetime capital and operating costs. These estimates follow critical financial assumptions made by OTA and, as with all estimates of future cost, there is a high degree of uncertainty [OTA's brief summary of its cost analysis, reprinted here, does not fully reflect OTA's assumptions and calculations, which include some higher cost scenarios.]
- Most operators will not purchase accessible vehicles until sometime after the ADA regulations go into effect in 1996–97, so they will not begin to incur these costs for some time. As operators turn over their fleet, the cost of implementing accessible service will rise and approach approximately 1 percent of the total operating costs only when the fleet becomes fully accessible.
- Choice in purchasing station-based or onboard level-change devices is an important factor in minimizing costs. For example, operators in urbanized areas with many express buses are likely to benefit from station-based technologies, whereas operators in rural areas with many stops will most likely prefer OTRBs with onboard level-change devices.

What Might the Impacts Be?

The impacts of the ADA cannot be predicted with any certainty. OTA estimates the most likely impacts as follows:

OTRB operators providing fixed-route service will face capital and operating costs in implementing the ADA. Since many OTRB operators are experiencing financial difficulties, already they are concerned about these costs. Some fixed-route providers have said that they may reduce service, and it is conceivable that some companies already in financial trouble could choose to end service. Charter and tour operators of OTRBs have somewhat simpler requirements than fixed-route providers under the ADA, and, as their general financial situation is often stronger than that of fixed-route OTRB operators, the cost impact should be less.

Rural communities could experience a reduction in service, but it is not possible to predict whether this will actually happen. Given the proprietary nature of company data and the decline of rural service over the decades before the passage of the ADA, it may be impossible to isolate the effect of ADA compliance on rural service—even after the fact—but OTA expects the effect to be marginal.

Persons with disabilities and other passengers face a phase in of full accessibility that could last as long as 20 years. Thus, for a number of years, carrying of riders with mobility impairments will still be used as a method of boarding assistance, creating problems for both the riders and OTRB personnel. Accessibility costs that are passed on through increased fares could marginally reduce ridership by those now using OTRBs. However, the demand for OTRB service by persons with disabilities will most likely increase as systems become truly accessible and the population ages.

Questions

While the OTA study examines in depth many of the issues concerned with OTRB accessibility, the Department is interested in receiving information on a wide variety of issues. We will consider the information we receive in response to these questions and from the October 1993 workshop, as well as the OTA findings and recommendations, as we work to formulate an NPRM to carry out section 306(a)(2)(B) of the ADA and a regulatory evaluation for that NPRM.

A. Scope of Accessibility Requirements

The joint Access Board-DOT NPRM will concern the guidelines for bus accessibility. It will propose answers to the question, "What does an accessible OTRB look like?" The Department's separate NPRM on accessible OTRB service will address issues such as what requirements bus companies should meet for acquiring accessible buses and what OTRB service requirements should be established. It is the Department's responsibility to determine the scope of accessibility requirements for OTRB operators.

The OTA study appears to take the legal view that, under the ADA, OTRBs must be subject to the same requirements as other large buses operated by private entities primarily in the business of transporting people. In this view, for example, the Department would be compelled to require that all new OTRBs purchased for fixed-route service be accessible. The Department, while required to take OTA's views and recommendations into account, is not bound by them. Consequently, the Department is authorized to consider whether, for example, in light of the industry's financial circumstances, less stringent requirements could be imposed on some or all segments of the industry.

1. Should the requirements the Department imposes in its regulations differ in any respects from the requirements imposed on other private entities primarily engaged in the business of transporting people?

2. Should the rule require that all new buses to be used for fixed route service be accessible? For demand responsive service? If not, should there be an equivalent service standard applying to operators before they can purchase inaccessible buses? In the latter case, are vehicle pooling arrangements feasible and acceptable?

3. Should the rule require operators to have a minimum number of accessible vehicles in their fleets? Should this be a fixed number, or a percentage, or be otherwise dependent on the total number of vehicles in the fleet? If the operator is a national or regional operator, should this minimum be based on the operator's nationwide fleet or broken down into limited geographic areas? Should this minimum be required to be reached within a specific amount of time? If so, what number of years would be appropriate? Should requirements differ for fixed route and demand responsive operators? If the accessibility requirement does not apply to used buses (as is the case for other vehicles covered by section 304 of the ADA), how would the establishment of a specific number or percentage affect the operator's current policies on purchase of used vehicles?

4. Under section 304 of the ADA, private entities primarily in the business of transporting people must purchase accessible *new* vehicles in certain circumstances (e.g., for fixed route service). This requirement does not apply to used vehicles, however. If this same scheme is applied to OTRBs, then some operators may decide not to purchase new vehicles. As a result, the total national OTRB fleet may become completely accessible only very slowly. This has particular implications for the accessibility of interline service (e.g., if a major carrier has accessible vehicles, but a small interlining carrier does not, then a passenger with a disability may be unable to complete his or her intended trip). How can this problem best be addressed? Should all carriers be required to provide some accessible service, or equivalent service? Should the Department require good faith efforts to obtain accessible used OTRBs (as is required of public operators)?

5. Should there be a different set of rules depending on the size of an operator's fleet? For example, are there significant operational considerations for a company that has a few buses, as opposed to an operator with a few hundred or thousand buses, that should make the regulations different for these companies? Where should the break point be, and what should the regulatory differences be? (This question also is relevant to the timing of regulations, since small operators have an additional year to come into compliance, under the statute.)

6. If the regulation prescribes different standards based on the type of service provided (e.g., fixed route vs. charter/tour), how should the regulations address operators who provide both types of service?

B. Interim Service Requirements

1. It is likely that it will be many years before all OTRBs, or even a majority of OTRBs in providers' fleets, are accessible. Should the Department require providers to make some sort of accessible service available to passengers with disabilities in the meantime? If so, what kind of service should be required? When should such service be implemented?

2. The Department's existing interim requirements for OTRB service require boarding assistance for passengers who request it, without specifying the means. Boarding assistance could be provided by use of boarding chairs or direct hand-carrying, under these interim requirements. Under the new rule, should either of these means of providing assistance be required in instances where accessible service (e.g., employing vehicle-based or station-based lifts) is not available? Should it be discretionary with the carrier? Should it be prohibited, given the problems that it may create for both passengers and carrier personnel? Both hand-carrying and current airline-style boarding chairs require two people to provide assistance. How would operators address the need for personnel to perform this service?

3. During the period before operators' fleets fully meet accessibility requirements, it has been suggested that a reservations system could be used by passengers with disabilities to alert operators that accessible service will be necessary. Some have suggested that an "on-call" accessible bus system would be a good idea. On the other hand, OTA said, and others have argued, that the ADA would not permit requiring persons with disabilities to use a reservation system if other passengers are not also required to use it. That is, if passengers in general can be accommodated on a "space available" basis by showing up at the terminal, the

ADA would require that same flexibility of service to apply to passengers with disabilities. The Department seeks comments on this issue. Would an "on-call" system specifically for passengers with disabilities be appropriate as part of an "interim" system even if not appropriate on a permanent basis?

C. Operational and Fleet Composition Issues

1. What load factors do fixed-route operators have for various kinds of service at various times (e.g., average weekdays, Friday nights, nights before and evenings of holidays, various seasons etc.)

2. What are carriers' policies for accommodating extra passengers when scheduled buses are full? For example, do carriers add extra buses? If so, how many extra passengers must be waiting before an extra bus is added? Is there a difference between how extra passengers are handled at a terminal and at some en route pickup point? Do carriers' practices in this regard depend on equipment availability at a given time and place, or is there a policy of always making an extra bus available when needed for a given number of passengers?

3. If the first available OTRB cannot accommodate a wheelchair user (e.g., all securement locations are occupied), what, if any, "back-up" service should be required? Should the operator provide another accessible OTRB? Is equivalent service in another type of vehicle acceptable? What constitutes a reasonable waiting time for the passenger to receive service in a back-up or alternative vehicle?

4. What percentage of trips involve interlining? How, if at all, would the introduction of accessible buses affect interlining?

5. What is the breakdown of the types of stops/stations (e.g., terminals, Interstate highway rest stops, restaurants, retail stores, flag stops etc.), in terms of numbers and percentages?

6. Charter tour operations sometimes provide "tour guide" services, in which an employee provides information about points of interest, etc. Should the Department propose requirements to provide these services in ways which are available to persons with hearing impairments? If so, what means are preferable? What would the cost be?

7. Should drivers be required to cycle lifts before leaving on a trip? If lifts malfunction, what should the driver or bus company do? How should service be provided to passengers who may be unable to be served because of a broken lift (especially if the passenger is already on board)?

8. How are people needing special accommodations other than assistance with mobility (e.g., users of oxygen or respirators) currently handled on OTRBs providing fixed route or charter service? What should requirements be for serving such passengers?

9. If the main door is used to board wheelchair users and other passengers, what are the potential impacts on boarding and deboarding times and schedule delays?

10. If station-based lifts are used in lieu of vehicle-based lifts, how many personnel are needed to deploy and operate these lifts? How long does it take to get on or off an OTRB using a station-based lift, compared with a vehicle-based lift? What is the availability and cost of station-based lifts (purchase price and operation/maintenance costs)? Please estimate annual production of these units. We request that users and manufacturers provide data supporting their responses to these questions.

11. How would persons with disabilities best be deboarded in an emergency that prevented the lift from operating (e.g., an accident that caused the lift to jam)? Should buses carry any particular sort of equipment to assist in this situation? If so, what equipment should be required?

12. Are station-based ramps available that could be used for boarding and deboarding? Do they (and do they need to) meet ADA ramp slope specifications?

D. Lavatories and Rest Stops

1. The OTA report indicates that installation of current on-board accessible lavatory modules on OTRB's will result in the loss of seating capacity. Are there operational ways of minimizing potential seat loss for these units?

2. OTA estimates that lavatory modules they studied cause a loss of 3–7 seats on OTRBs. What would be the economic effects of such a reduction in seating capacity on particular companies? On industry segments (e.g., long haul fixed route, short haul fixed route service, charter/tour service)? On the industry as a whole?

3. The economic effects of a reduction in seating capacity caused by installation of accessible lavatories would appear to depend, to some extent, on vehicle load factors. That is, if a bus now carries an average of 20 persons per trip, the revenue the bus generates for its owner would be unaffected if the seating capacity dropped from 47 to 42. On the other hand, if that same bus carries an average of 45 persons per trip, the reduction on seating capacity would have a revenue impact. Is this a fair assumption? With this in mind, what currently are the load factors for particular companies, industry segments, the entire industry?

4. Could the economic effects of any such reductions, especially at peak travel times, be mitigated by the provision of alternative transportation services for able-bodied passengers? That is, if what otherwise would be a full bus could, because it had an accessible lavatory, carry only 42 passengers, a van might be made available for the five "excess" passengers, presumably at lower capital and operating costs than an additional full size bus. Is such an alternative practical? Could the "excess" passengers be accommodated in the same manner currently used to accommodate passengers in excess of bus capacity?

5. The most obvious means of ensuring access by persons with mobility impairments to rest room services, in the absence of on-board accessible lavatories, is to make rest stops at facilities with accessible restrooms. Currently, at what intervals are rest stops provided? How long are the stops? Please provide data to support estimates.

6. From the point of view of passengers who use wheelchairs (as well as in terms of the convenience of other passengers), at what intervals should rest stops be made (e.g., 2 hours, 3 hours, 4 hours, on request) and how long should they be? What is the estimated time for a passenger to use a lift to get on and off an OTRB? We would request data on this point particularly from operators who now provide accessible service.

7. At the present time, what are the mean and median stage lengths of fixed route OTRB service? Do stage lengths differ on "express" service from stage lengths on non- "express" or "local" service? What percentage of runs, and of passengers, are represented by "express" trips with longer stage lengths? What effects would rest stops of various intervals and lengths have on service of this kind?

8. It appears likely that charter/tour operators (i.e., carriers who operate demand responsive service) may have more flexibility in choosing rest stops, as well as foreknowledge of whether a given trip will include persons with mobility impairments. What problems, if any, would charter/tour operators have in ensuring availability of accessible rest stops to passengers?

9. A necessary condition of using rest stops as the means of making rest rooms available to passengers with disabilities

is the presence of accessible rest room facilities, with an accessible pathway, along the route. What problems have operators had in finding accessible rest stops?

10. It is likely to be some years before OTRB fleets are composed largely or wholly of accessible buses. Pending that time (even if accessible lavatories are required on new OTRBs), should bus operators be required to stop only at accessible rest stop locations?

11. Suppose that there are a limited number of fixed routes (e.g., long express runs) on which it would not be feasible (e.g., for reasons of too-lengthy schedule delays) to use rest stops as a means of providing accessible rest room service to passengers with disabilities. Would it be practical, and consistent with the ADA, to use on-call accessible buses with accessible on-board rest rooms to provide service to passengers with disabilities on these routes?

E. Training

1. Should driver training be required? Training for other public contact personnel? How much? Should there be recurrent as well as initial training? What training with respect to accommodating passengers with disabilities do drivers and other company personnel now receive?

2. The training would probably include information on the proper and safe operation of vehicle-borne lifts, as well as on the use of securement devices. If station-based or wayside lifts are used, should the operator ensure that its drivers are familiar with the various types of lifts on particular routes? If not, who would be responsible for their proper operation?

3. Should drivers have sensitivity training, in order to respond appropriately to passengers with disabilities? What other areas, if any, should training cover?

4. What will the costs of training be? What is the average cost per hour of training bus drivers or other personnel involved?

F. Economic Issues

1. Some carriers may typically buy only new or only used buses. We solicit information on carriers' purchasing practices. In the last 10 years, how many new and how many used buses have you purchased? Is there a percentage increase in the cost of a new bus that would cause you to change current purchasing practices?

2. What means do carriers use to finance the purchase of newly acquired vehicles?

3. Carriers probably use different approaches for depreciating and/or amortizing the costs of buses. What are these methods? Would they change if requirements for accessibility features increased the cost of a new bus by a given percentage (e.g., 5–10 percent)?

4. To what degree is the purchase price of a used OTRB a function of age, versus other factors such as condition and number of miles driven? What is the price range for used OTRBs?

5. Some carriers provide a mix of service (e.g., fixed route intercity passenger services, charter or tour services, package express). What are carriers' gross revenues and net income by type of service? How sensitive is the demand for these services to price increases?

6. Is 20 years the life expectancy, on average, of all OTRBs, or does this differ by manufacturer? What is the average amount of time that initial purchasers tend to keep new OTRBs before resale?

7. If manufacturers sell both inaccessible and accessible buses, would making both designs impose significant costs on manufacturers, above the cost of making only accessible buses?

8. How does the industry determine price per seat? What is the estimated price per seat in particular companies, industry segments, and the industry as a whole?

Issued this 30th day of September, 1993, at Washington, DC.

Federico Peña,

Secretary of Transportation.

[FR Doc. 93–24865 Filed 10–8–93; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75 and 1018–AC09

Endangered and Threatened Wildlife and Plants; Thirty-Day Extension on the Proposed Rule To List the Northern Copperbelly Water Snake (Nerodia Erythrogaster Neglecta) and the Lake Erie Water Snake (Nerodia Sipendon Insularum) as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period and public hearing request deadline.

SUMMARY: The U.S. Fish and Wildlife Service (Service) extends for 30 days the period during which it will accept comments and requests for public hearings on two proposed rules to list the northern copperbelly water snake (*Nerodia erythrogaster neglecta*) (58 FR 43860–43863, August 18, 1993) and the Lake Erie water snake (*Nerodia sipendon insularum*) (58 FR 43857–43860, August 18, 1993) as threatened pursuant to the Endangered Species Act of 1973, as amended. The Service believes a number of parties interested in these proposed listings may not have received notice of the proposals in sufficient time to submit comments or request public hearings during the original comment periods. The extension will provide sufficient time for comment preparation and submission of requests for public hearings.

DATES: This extension will result in the comment period for both proposals ending on November 16, 1993. The public hearing request period will end on November 4, 1993, for both proposals.

ADDRESSES: Comments and public hearing requests should be submitted to the address below. The complete files for these proposals are available for inspection, by appointment, during normal business hours, at the Twin Cities Regional Office, U.S. Fish and Wildlife Service, Division of Endangered Species, Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Terence J. Miller, Acting Chief, Division of Endangered Species, at the above address (telephone 612/725–3276).

SUPPLEMENTARY INFORMATION:

Background

These two snakes have been proposed for listing as threatened species due to strong evidence that their range and numbers have declined dramatically, primarily as a result of the destruction of their habitats, and that the threats to their habitats and to the snakes themselves are continuing. The northern copperbelly water snake now persists in isolated populations in southern Michigan and adjacent Indiana and Ohio, southern Indiana, southeastern Illinois, and adjacent Kentucky. It occupies lowland swamps and adjacent wooded and upland areas. The Lake Erie water snake is now found only on a portion of the limestone island archipelago of western Lake Erie; the mainland peninsula between Catawba and Marblehead, Ohio; and Pt. Pelee, Ontario. Its habitat is the rocky shoreline and adjacent waters of Lake Erie.

Since the publication of the August 18, 1993, proposal to list these two snakes as threatened species, the

Service has been attempting to contact owners of property upon which these snakes are believed to exist. The Service has also been contacting the major national, regional, and state herpetological organizations; county, state, and Federal governmental agencies having activities in these areas; and Congressional representatives from these locations to notify them of the proposals and their potential effects. However, the Service believes a significant number of interested and affected parties may not have received notification in time for them to review the proposal and submit comments or requests for public hearings. The Service considers input from all interested and affected parties to be a vital component of the listing process. Therefore, the Service is providing additional opportunity for all parties to prepare and submit comments on the proposal and to request public hearings.

Author

The author of this notice is Ronald L. Refsnider, U.S. Fish and Wildlife Service, Division of Endangered Species, Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

Authority

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

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

Dated: October 5, 1993.

Thomas J. Kerze,

Acting Regional Director.

[FR Doc. 93–24919 Filed 10–8–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 195
Tuesday, October 12, 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; Fourth 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), other than products of Canda, which may be imported 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 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 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 fourth 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 28th day of September 1993.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 93–24880 Filed 10–8–93; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Savant Sage Resource Area, Idaho Panhandle National Forests, Kootenai County, ID

ACTION: Notice of Availability of the Draft Environmental Impact Statement for proposed activities in the Savant Sage Resource Area.

DATES: The comment period on this draft environmental impact statement ends November 26, 1993.

ADDRESSES: Send written comments to District Ranger, Fernan Ranger District, 2502 E. Sherman Avenue, Coeur d'Alene, ID 83814.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Patrick Sheridan. Planning Staff Officer, Fernan Ranger District, Idaho Panhandle National Forests, 2502 East Sherman Avenue, Coeur d'Alene, ID 83814. Phone: (208) 769–3000.

SUMMARY: The notice is hereby given that the Forest Service has prepared a Draft Environmental Impact Statement (EIS) documenting a landscape-level approach to ecosytem management in the Savant Sage Resource Area. The area is located approximately 5 miles east of Athol, Idaho, and is approximately 7,500 acres in size.

Public participation is important. People may visit with Forest Service officials at any time prior to the decision, however, it is very important that public comment be made available to the Forest Service during review of this Draft EIS. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by January, 1994. The Forest Service will respond to the comments received in the FEIS.

The District Ranger is the responsible official for this EIS, and will make a decision regarding this proposal considering the comments and responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

SUPPLEMENTARY INFORMATION: A very specific proposed action was developed for the area, and included timber harvest and reforestation activities, through implementation of a single timble sale. The scope of the proposed action is limited to timber harvesting, reforestation, and related road construction and reconstruction activities. During development of the proposed action and alternatives to the proposed action, emphasis has been placed on addressing the water resource needs and visual concerns of local residents.

Five alternatives were developed, including a No-Action Alternative. Alternative 5 is the alternative preferred by the Forest Service. Under Alternative 5, uneven-aged management (group selection) would be utilized on all of the acres to be treated. No new roads would be constructed; approximately 3.5 miles of road would be reconstructed. Helicopter logging would be used to allow access to a larger portion of the area while avoiding construction of new roads and meeting resource needs, including water resource needs and visual concerns of local residents. There would be a total of 561 acres treated.

Management activities would be administered by the Fernan Ranger District of the Idaho Panhandle National Forests in Kootenai County, Idaho. This EIS will tier to the Forest Plan (September 1987) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area.

The agency invites written comments and suggestions on the issues and management opportunities in the area

being analyzed. Written comments concerning the scope of the analysis must be received within 45 days from the date of publication in the Federal Register.

Dated: October 12, 1993.

Peggy Polichio,

Acting District Ranger, Fernan Ranger District, Idaho Panhandle National Forests.

[FR Doc. 93–24858 Filed 10–8–93; 8:45 am]

BILLING CODE 3410–11–M

Seed Orchard Pest Management Program in the Erambert and Black Creek Seed Orchards, National Forests in Mississippi, Perry and Forrest Counties, MS

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service published a Notice of Intent to prepare an environmental impact statement (EIS) in the Federal Register (56 FR 23674) on May 20, 1991, for a proposal to develop a pest management program at two Mississippi Seed Orchards: The Erambert Seed Orchard near New Augusta and the Black Creek Seed Orchard near Brooklyn. The Notice of Intent is revised to show that the draft EIS is expected to be available for public review by March 1994, and the final EIS is scheduled to be completed by October 1994.

FOR FURTHER INFORMATION CONTACT: Jerry Windham, Erambert and Black Creek Orchard Manager, 368 Ashe Nursery Road, Brooklyn, MS 39425, Phone: (601) 584–8488; or Sally Campbell, EIS Team Leader, PO Box 3623, Portland, OR 97208, Phone: (503) 326–7755.

Dated: September 23, 1993.

Kenneth R. Johnson,

Forest Supervisor.

[FR Doc. 93–24924 Filed 10–8–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC 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).

Agency: Economic Development Administration

Title: Applicant Certification Clause

Form Number: Agency: ED–536 OMB #: 0610–0092

Type of Request: Extension

Burden: Reporting Requirement: 385 respondents totalling 7,700 hours. Average reporting time is twenty hours.

Needs and Uses: To avoid liability under CERCLA and meet EDA's responsibility under NEPA, applicants will be required to certify regarding their knowledge of any hazardous or toxic contamination that may affect properties subject to project construction activities.

Affected Public: Public works and Title IX applicants connected with EDA projects.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 6, 1993.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 93–24974 Filed 10–8–93; 8:45 am]

BILLING CODE 3510–CW–M

Foreign-Trade Zones Board

[Order No. 657]

Grant of Authority for Subzone Status, Bally, Inc., (Shoes/Accessories) New Rochelle, NY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the County of Orange, New York, grantee of Foreign-Trade Zone 37, for authority to establish a special-purpose subzone for the shoe and accessory distribution/processing facility of Bally, Inc., in New Rochelle, New York, was filed by the Board on November 6, 1991, and notice inviting public comment was given in the Federal Register (FTZ Docket 78–91, 56 FR 65040, 12/13/91); and,

Whereas, the Board has found that the requirements of the Act and Board's regulations would be satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 37B) at the Bally, Inc. plant in New Rochelle, New York, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 30th day of September 1993.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–24975 Filed 10–8–93; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–701 and C–307–702]

Certain Electrical Conductor Aluminum Redraw Rod From Venezuela Court Decision and Suspension of Liquidation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of court decision.

SUMMARY: On August 4, 1993, the United States Court of International Trade (CIT) affirmed the International Trade Commission's (ITC) determination on remand of no threat of material injury to the U.S. industry. *Suramerica de Aleaciones Laminadas, C.A.* v. *United States,* Slip op. 93–144 (CIT Aug. 4, 1993) (*Suramerica*). *Suramerica* is presently on appeal to the

U.S. Court of Appeals for the Federal Circuit (Federal Circuit). If the Federal Circuit affirms the CIT decision, then the U.S. Department of Commerce (the Department) will revoke the antidumping and countervailing duty orders.

In accordance with the U.S.Court of Appeals for the Federal Circuit (Federal Circuit) decision in *Timken Company* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department will continue to order the suspension of liquidation of the subject merchandise until the Federal Circuit issues a conclusive decision in this lawsuit.

EFFECTIVE DATE: August 14, 1993.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, Office of Countervailing Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3338.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 1988, the ITC determined that an industry in the United States was threatened with material injury by reason of imports of Electrical Conductor Aluminum Redraw Rod from Venezuela. Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, Invs. Nos. 701–TA–287 (Final) and 731–TA–378 (Final), USITC Pub. 2103 (Aug. 1988). The ITC determination was appealed and on March 15, 1993, the CIT remanded to the ITC the threat of injury determination. *Suramerica de Aleaciones Laminadas, C.A.* v. *United States*, Slip op. 93–35 (CIT March 15, 1993). On June 2, 1993, the ITC determined on remand that there was not threat of material injury to a U.S. industry. The CIT affirmed the ITC's remand determination on August 4, 1993. *Suramerica*. This case is presently on appeal at the Federal Circuit.

Suspension of Liquidation

In its decision in *Timken*, the Federal Circuit held that the Department must publish notice of a decision of the CIT or the Federal Circuit which is not "in harmony" with the Department's or the ITC's respective final determinations. The CIT's decision in *Suramerica* on August 4, 1993, constitutes a decision not in harmony with the ITC's affirmative injury determination. Accordingly, the Department is publishing this notice. The Federal Circuit also held that the Department must suspend liquidation pending a "conclusive" court decision in the action. Therefore, the Department will continue the suspension of liquidation of the subject merchandise until the Federal Circuit issues a final decision in this action. If the Federal Circuit affirms the CIT's decision that there is no threat of material injury to a U.S. industry, then the Department will revoke the antidumping and countervailing duty orders in this case effective August 14, 1993.

Dated: September 29, 1993.

Joseph A Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–24977 Filed 10–8–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–100–002]

Notice of Price Determination; Uranium From Kazakhstan, Kyrgyzstan, Russia, and Uzbekistan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: Pursuant to section IV.C.1. of the antidumping suspension agreements on uranium from Kazakhstan, Kyrgyzstan, Russia, and Uzbekistan, the Department calculated an observed market price for uranium of $11.12/lb. On the basis of this price, the export quota for uranium pursuant to section IV.A. of each of the agreements is zero. Exports pursuant to other provisions of the agreements are not affected by this price.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Melissa Skinner or Beth Chalecki, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave. NW., Washington, DC 20230; telephone: (202) 482–0159 or (202) 482–2312.

PRICE CALCULATION:

Background

Section IV.C.1. of each agreement specifies that the Department will issue the DOC observed market price on October 1, 1993, and use it to determine the quota applicable to imports from the various republics during the period October 1, 1993 to March 31, 1994.

Calculation Summary

Section IV.C.1. of each agreement specifies how the components of the market price are reached. In order to determine the spot market price, the Department utilized the monthly average of the Uranium Price Information System Spot Price Indicator (UPIS SPI) and the weekly average of the Uranium Exchange Spot Price (Ux Spot). In order to determine the long-term market price, the Department utilized the average long-term price as determined by the Department on the basis of information provided by market participants. The Department did not use the UPIS Base Price because no new contracts were reported executed between April 1, 1993, and September 1, 1993.

Our letters to market participants provided a contract summary sheet and directions requesting the submitter to report his/her best estimate of the future price of merchandise to be delivered in accordance with the contract delivery schedules (in U.S. dollars per pound U_3O_8 equivalent). Using the information reported in the proprietary summary sheets, the Department calculated the present value of the prices reported for any future deliveries assuming an annual inflation rate of 3.9 percent, which was derived from a rolling average of the annual GNP Implicit Price Deflator Index from the past four years. The Department used the base quantities reported on the summary sheet for the purpose of weight-averaging the prices of the long-term contracts submitted by market participants. We then calculated a simple average of the UPIS Base Price and the long-term price determined by the Department.

Weighting

As in the previous price determination released on April 1, 1993, the Department used the average spot and long-term volumes of U.S. utility purchases during 1988–1991, as reported by the Energy Information Administration (EIA) to weight the spot and long-term components of the observed price. During this period, the spot market accounted for 30.05 percent of total purchases, and the long-term market for 69.95 percent.

Calculation Announcement

The Department determined, using the methodology and information described above, the observed market price is $11.12. This reflects an average spot market price of $10.12, weighted at 30.05 percent, and an average long-term contract price is $11.54, weighted at 69.95 percent. Since this price is below the $13.00/lb. minimum expressed in Appendix A of the agreements, there will be no quota under Section IV.A. of the agreements available to any signatory republic for the period October 1, 1993 to March 31, 1994.

Comments

Consistent with the Department's letters of interpretation dated February 22, 1993, we provided interested parties our preliminary price determination on September 10, 1993. We received comments from interested parties, which are addressed below.

Long-Term Price Calculation

Comment 1: The Government of the Russian Federation (GORF) maintains that, according to Section IV.C.1 of the Agreement, the Department is obligated to use the UPIS Base Price in the long term price segment of its calculation, whether or not it includes contract data signed during the period under consideration. According to the GORF, all parties discussed the limitations of the UPIS Base Price as an indicator during negotiations, but agreed to use it anyway, since the Russian Federation insisted upon a third-party price index. The long-term uranium market is characterized by a handful of transactions, and ignoring an indicator such as the UPIS Base Price may inaccurately skew the price determination. Since the Agreement provides the Department with latitude to use price information concerning transactions outside the six-month period immediately preceding the price determination, the Department is permitted, even obligated, to use a UPIS Base Price value that contains such information. Finally, the GORF again proposes that the Department establish procedures for mandatory reporting of all long-term uranium contracts executed in the United States.

Department's Position: We disagree with the GORF and have not included the UPIS base price in this price determination. The latest data reported in the UPIS Base Price represents contracts signed in November of 1992. This information was appropriately used in the Department's calculation of the observed market price as released on April 1, 1993, covering the period October 16, 1992 through March 1, 1993. The UPIS Base Price as reported during the period March 1, 1993 through September 1, 1993 is no longer representative of the current long-term market. The Department's observed price is intended to provide a picture of the market as it was during the previous six months, and we see no reason to include "old" data. Finally, as previously stated, the Department has no authority to require long-term uranium contracts be reported.

Comment 2: The GORF argues that the Department should utilize maximum, not base, quantities when calculating quantity to be delivered under long-term contracts. These quantities, the GORF maintains, represent committed demand at a committed price in the U.S. market, which satisfies the Department's requirements for usable long-term information.

Department's Position: We disagree with the GORF. While the maximum quantity deliverable in a contract is, theoretically, the maximum demand that *can* be placed on the seller, it occurs only at the discretion of the buyer. The nominal contract quantity, in contrast, is the maximum demand that will be placed on the seller, regardless of any future decisions made by the buyer, unless the contract is renegotiated.

Comment 3: In classifying contracts as long-term or spot purchases, the GORF argues that any contract in which the deliveries are made over a period longer than twelve months should be considered a "long-term" contract. UPIS defines its spot transactions as involving "delivery within six months," and EIA defines long-term contracts as those "under which at least one delivery of material is scheduled to occur during the second calendar year after the contract-signing year." Consequently, the GORF would like the Department to include in its long-term calculation three specific reported contracts of two- and three-year duration.

Department's Position: We disagree with the GORF. Different entities within the industry use different definitions, and the cited example, of UPIS and EIA using different definitions of long-term contracts, is illustrative of the fact that there is no set industry standard. The long-term component of our price calculation is designed to include that part of the market that represents stable utility purchases for end use in a reactor. Longer term contracts mean security of supply for the buyer and more responsibility to deliver for the seller in spite of unforeseen consequences in the future market. This allows the seller to charge higher prices for the same material that is available on the spot market, often for a lower price, but with less security for the buyer. Such longer term contracts are the only type of contract allowed to be filled pursuant to Appendix C of any agreement; since these contracts indicate a serious commitment on behalf of both the seller and the buyer, they were viewed as increasing market stability, consistent with the purpose of the agreements. The DOC has continued to include only contracts of four years or more, consistent with our April 1, 1993 price calculation.

Comment 4: The petitioners point out that, in the long-term segment of the price calculation, the Department has listed two reported contracts that in fact appear to be the same contract reported by both the seller and the buyer. In this case, however, the seller has reported a significantly higher pricing term than has the buyer. Petitioners argue that, absent clear and sufficient explanation of the discrepancies in the respective price calculations, the Department should drop both contracts from the long-term price segment.

Department's Position: We have examined the contracts in question and have received sufficient explanation as to the discrepancy in price term calculation. Rather than dropping the two contracts, however, the Department has decided to calculate a simple average of the two deflated prices. (*See*, Calculation Memo dated October 1, 1993)

Spot Price Calculation

Comment 5: The petitioners request that the Department correct a minor data error in its spot price segment of the calculation. The Department apparently inadvertently used the UPIS Short-Term Price Indicator data rather than the UPIS Spot Price Indicator data, which is consistent with previous calculations.

Department's Position: We agree with the petitioners and have corrected the data error.

Deflator Calculation

Comment 6: The GORF argues that the Department should only use a rolling average of the past three years of GNP Implicit Price Deflator data, rather than the past four years, in deflating future contract prices. This is consistent with the three-year benchmark used by the Energy Information administration in summarizing the percentage of U.S. uranium sales made pursuant to long-term and spot transactions.

Department's Position: We note that the EIA data representing the percentage of U.S. utility purchases made in the spot and long-term markets covers the inclusive four-year period form 1989 through 1992.

Since both the EIA data and the GNP deflator cover the same period of four years, we are making no adjustment to the data.

After analysis of the above comments, we have determined that the observed market price for uranium is $11.12/lb. The Department invites parties to provide pricing information for use in the next price determination. Any such information should be provided for the record and should be submitted by March 5, 1994.

Dated: October 1, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–24976 Filed 10–8–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 100593B]

New England Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a one day public meeting on October 14, 1993, at the Ramada Inn, 225 McClellan Highway, East Boston, MA; telephone: 617–569–5250. The meeting will begin at 9:30 a.m. on October 14.

The Lobster Oversight Committee will present its recommendations for management measures to be included in the public hearing document for Amendment #5 to the Lobster Fishery Management Plan. The full Council then intends to approve the document and schedule public hearings.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Dated: October 5, 1993.

Richard H. Schaefer,

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

[FR Doc. 93–24941 Filed 10–8–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 100593A]

Pacific Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (Team) will hold a public meeting on October 19–21, 1993, at the National Marine Fisheries Service, Alaska Fisheries Science Center, 7600 Sand Point Way NE, Building 4, room 2079, Seattle WA. The meeting will begin on October 19 at 1 p.m. and adjourn on October 21 at 4:30 p.m.

The Team will act on the following agenda items:

(1) Review final stock assessment reports for several important groundfish species;
(2) Develop final 1994 harvest level recommendations to the Council and prepare the annual Stock Assessment and Fishery Evaluation document;
(3) Calculate open access groundfish allocations for the 1994 license limitation program;
(4) Develop trip limit recommendations;
(5) Consider the individual transferrable quota proposal for the fixed gear sablefish fishery; and
(6) Review progress on an analysis of a Pacific whiting allocation proposal and final catch projections for various species for the remainder of the year.

The Council has directed the Team to review a list of management issues developed at a "scoping" session in September and rank them in order of priority. On October 21 the Team will meet beginning at 1:30 p.m., to ask members of the public attending the meeting to help assign the proper priority to each issue.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: October 5, 1993.

Richard H. Schaefer,

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

[FR Doc. 93–24942 Filed 10–8–93; 8:45 am]

BILLING CODE 3510–22–P

Marine Mammals

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

ACTION: Modification of scientific research permit No. 771 (P66I).

SUMMARY: Notice is hereby given that Scientific Research Permit No. 771 issued to the Alaska Department of Fish and Game, P.O. Box 3–2000, Juneau, AK 99802, on March 20, 1992 (Publ. 57 FR 10649), amended on May 28, 1993, has been further amended. This modification becomes effective upon signature by the Assistant Administrator for Fisheries.

ADDRESSES: The Permit, as amended, and associated documents are available for review upon written request or by appointment in the Office of Protected Resources, NMFS, 1315 East-West Hwy., Room 13130, Silver Spring, MD 20910; and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (907/586–7221).

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of Sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and Section 220.24 of the regulations governing endangered fish and wildlife permits, the subject Permit which authorized capture, tagging and handling research on up to 50 Steller sea lions (*Eumetopias jubatus*), the accidental death of up to 10 during the course of developing and testing effective chemical immobilization protocols, and unintentional disturbance of up to 1000 seals during the course of all research activities over a 2-year period.

The Permit was modified to extend the take authority until December 31, 1994. No increase in the original number of takes is authorized.

Dated: October 1, 1993.

Herbert W. Kaufman,

Acting Director, Office of Protected Resources National Marine Fisheries Service.

[FR Doc. 93–24920 Filed 10–8–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

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

ACTION: Issuance of modification to scientific research permit No. 808 (P368C).

SUMMARY: Notice is hereby given that Permit No. 808 issued to Dr. James T. Harvey, Assistant Professor, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, CA 95039–0450, on October 16, 1992 (publ. 57 FR 60173, 12/18/92), has been modified. The modification became effective upon signature of the Assistant Administrator for Fisheries.

ADDRESSES: The Permit, as modified, and associated documents are available upon written request or by appointment in the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20901 (301/713–2289); and Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4015).

SUPPLEMENTARY INFORMATION: Prusuant to the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking

and Importing of Marine Mammals (50 CFR part 216), the subject Scientific Research Permit authorized the capture of up to 200, inadvertent harassment of up to 300, and the accidental death of up to 20 California sea lions (*Zalophus californianus*), during the research activities.

The Permit has been modified to extend the expiration date to December 31, 1994, and to allow the researcher to administer a small amount of Valium when restraining animals.

Dated: October 1, 1993.

Herbert W. Kaufman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–24921 Filed 10–8–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Inventions for Non-exclusive, Exclusive, or Partially Exclusive Licensing

AGENCY: U.S. Army Communications-Electronics Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 announcement is made of the availability of the following inventions for non-exclusive or partially exclusive licensing. All of the listed inventions will be assigned to the United States of America as represented by the Secretary of the Army, Washington, DC. These inventions are as yet unpatented and may not be patentable. They relate in general to spread spectrum multiplexed noise codes and methods to eliminate interference among them, and to antenna systems and signal marking techniques.

By utilizing these multiplexed noise codes, simplex and duplex wireless data transmission may be accomplished with no interference. Further, these codes may be used in multiple access communication systems wherein each user may be assigned a different unique noise code pair consisting of code mate pairs that are selected from a subset of multiplexed noise codes whose cross-correlation function value is equal to zero at a time when all the code mate pairs compress to a single impulse with no sidelobes. Therefore, a large number of users may exist in any one local transmission area.

These inventions, in large part, relate to a series of patents already licensed by a party from the United States Army. While the Army will consider licensing on a nonexclusive, exclusive or partially exclusive basis preference will be given to a mandatory sublicensing arrangement through that party. A list of relevant invention disclosures follows:

—Multiamplitude Single Phase Pseudonoise Coded System.
—A New and Different Philosophy and Intercept System for Optimum Detection of Frequency Hopping Signals.
—Signal Marking Low Probability of Intercept Concepts.
—A Multidimensional Rake Diversity Transmission System.
—Noise Measurement Systems.
—A Unique Transversal Filter Design Concept.
—A Unique End Fire Linear Array Antenna.
—High Data Rate H.F. Transmission System.
—An ECCM Technique for Countering Pulse Noise Jamming.
—Generation of Orthogonal Code Sets.
—Orthogonal Code Set Generation with Randomly Interleaved Code Bits.
—A General Vector Transform Theory.
—A Multiple Rate Orthogonal CDMA System.
—An Optimal Intercept Receiver for Detecting Time Hopping Signals.

Under the authority of Section 11(a)(2) of the federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of Title 35, United States Code, the Department of the Army as represented by the Communications-Electronics Command wishes to license the U.S. patents listed above in the non-exclusive, exclusive, or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

ADDRESSES: Commander, United States Army Communications-Electronics Command, ATTN: AMSEL–LG–L, Fort Monmouth, New Jersey 07703–5010.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Zelenka, (908) 532–4112.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–24922 Filed 10–8–93; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army, Engineers Corps

Recreational User Fees

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: In accordance with the provisions of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, section 210 of the Flood Control Act of 1968 (16 US Code 406d–3) (as amended), and 36 Code of Federal Regulation § 327.23 governing public use of U.S. Army Corps of Engineers Water Resource Development Projects Administered by the Chief of Engineers, this notice hereby establishes a change in the collection of recreational user fees for Federal Government recreation areas administered by the Chief of Engineers.

The specific application of the fees to be collected will be reflected in notices posted at each U.S. Army Corps of Engineers water resource development project where a use fee is to be charged.

EFFECTIVE DATE: The effective implementing date of this change is 1 March 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Darrel E. Lewis, U.S. Army Corps of Engineers, Natural Resources Management Branch, Washington, DC 20314–1000, telephone (202) 272–0247.

SUPPLEMENTARY INFORMATION:

House Bill

Authorizes the Secretary of the Army to establish and collect fees for the use of developed recreation sites and facilities. New fees established under the authorization are limited to $3 per private, noncommercial vehicle. It also deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

Senate Amendment

Authorizes the Secretary of the Army to charge fees for the use of developed recreation sites and facilities, and deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

Conference Agreement

Adopts a combination of the two provisions authorizing the Secretary of the Army to establish and collect fees for the use of developed recreation sites and facilities. The new fees are limited to $3 per private, noncommercial vehicle transporting not more than 8 persons. It also deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

Wording of the Approved Bill

Sec. 210. Recreational User fees, paragraph (b), Fees for use of developed recreation sites and facilities requires that—

1. Notwithstanding section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S. Code 4601–6a(b)), the Secretary of the Army is authorized, subject to paragraphs (2) and (3), to

establish and collect fees for the use of developed recreation sites and facilities, including campsites, swimming beaches, and boat launching ramps but excluding a site or facility which includes only a boat launch ramp and a courtesy dock.

2. The Secretary shall not establish or collect fees under this subsection for the use or provision of drinking water, wayside exhibits, roads, scenic drives, overlook sites, picnic tables, toilet facilities, surface water areas, undeveloped or lightly developed shoreline, or general visitor information.

3. The fee under this subsection for use of a site or facility (other than an overnight camping site or facility or any other site or facility at which a fee is charged for use of the site or facility as of the date of the enactment of this paragraph (10 August 1993)) for persons entering the site of facility by private, noncommercial vehicle transporting not more than 8 persons (including the driver) shall not exceed $3 per day per vehicle. Such maximum amount may be adjusted annually by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

4. All fees collected under this subsection shall be deposited into the Treasury account for the Corps of Engineers established by section 4(i) of the Land and Water Conservation Fund Act of 1965 (16 U.S. Code 4601–6a(i)).

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–24923 Filed 10–8–93; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Intent to Prepare an Environmental Impact Statement for Proposed Realignment of Naval Training Center, Great Lakes, Illinois

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the realignment of Naval Training Center (NTC), Great Lakes, Illinois. This realignment is being conducted in compliance with the Defense Base Closure and Realignment Act of 1990.

The proposed action involves the relocation of personnel and activities from NTC Orlando, Florida, and NTC San Diego, California, to NTC Great Lakes, Illinois. Under the current base closure scenario, all recruit training, service, and apprentice schools form NTC Orlando and NTC San Diego will be consolidated at NTC Great Lakes. The consolidation of recruit training and service schools at NTC Great Lakes will increase the current average number of recruits/students by approximately 7,500 students. Also, approximately 1,100 additional personnel, with their dependents, will relocate to support the various schools.

Several military construction projects are required to upgrade existing facilities and construct new facilities to support the increased operations. This will include new warehouses, training facilities, bachelor quarters, and approximately 240 new family housing units.

Alternatives addressed in the EIS will focus on means of meeting realignment requirements at NTC Great Lakes, including alternative construction site locations. Major environmental issues that will be addressed in the EIS include, but not limited to, socioeconomic impacts, water quality, wetlands endangered species, cultural resources and local infrastructure impacts.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeting on October 27, 1993, beginning at 7 p.m., at the College of Lake County, room A–162, 19351 West Washington Street, Grayslake, Illinois. This meeting will be advertised in Chicago and selected local newspapers.

A brief presentation will precede request for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than November 12, 1993, to Commanding Officer, Southern Division, Naval Facilities Engineering Command, 2155 Eagle Drive, P.O. Box 190010, North Charleston, South Carolina 29419–9010 (Attn: Robert Teague, Code 203RT), telephone (803) 743–3864.

Dated: October 6, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–24972 Filed 10–8–93; 8:45 am]

BILLING CODE 3810–01–M

CNO Executive Panel; Closed Meeting

Notice was published Tuesday September 21, 1993, at 58 FR 49038, that the Chief of Naval Operations (CNO) Executive Panel Emerging Technologies Task Force was to meet on October 7, 1993, from 10:00 a.m. to 11:00 a.m., at the Pentagon. That Meeting has been rescheduled and will be held on October 25, 1993. All other information in the previous notice remains in effect. In accordance with 5 U.S.C. section 552b(e)(2), the meeting change is publicly announced at the earliest time.

For further information concerning this meeting contact: J. Kevin Mattonen, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

October 5, 1993.

Patrick W. Kelley

CAPT, JAGC, USN, Alternate Federal Register Liaison Officer.

[FR Doc. 93-24914 Filed 10-8-93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER93–972–000, et al.]

PacifiCorp, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 4, 1993.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER93–972–000]

Take notice that on September 24, 1993, tendered for filing in accordance with Commission's Order pertaining to agreements involving final amnesty for jurisdictional service and waiver of notice, issued July 30, 1993 under Docket No. PL93–2–002, agreements

which contain provisions involving a return of energy associated with the purchase of firm capacity from the Bonneville Power Administration (Bonneville).

Copies of this filing were supplied to Bonneville, the Public Utility Commission of Oregon, the Utah Public Service Commission, the Washington Utilities and Transportation Commission and the Public Utilities Commission of the State of California.

PacifiCorp requests, for each filed agreement, that the Commission disclaim jurisdiction that the Commission's approval is not required for such agreement(s) because the provision for the return of energy by PacifiCorp is not a jurisdictional service subject to the Commission's review.

In the alternative, if the Commission determines that the energy returns do constitute a jurisdictional service, PacifiCorp requests in accordance with 18 CFR 35.11 of the Commission's rules and regulations that a waiver of prior notice requirements be granted and that the filed agreements be accepted for filing effective as indicated for each of the agreements.

Comment date: October 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Power & Light Co.

[Docket No. ER93–268–001]

Take notice that on September 16, 1993, Pennsylvania Power & Light Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: October 13, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. North Atlantic Energy Corp.

[Docket No. ER93–803–000]

Take notice that on September 17, 1993, North Atlantic Energy Corporation (North Atlantic) tendered for filing supplemental information requested by Commission Staff in the above-referenced docket.

Comment date: October 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Co.

[Docket No. ER93–979–000]

Take notice that New England Power Company (NEP), on September 29, 1993, tendered for filing Supplement to Service Agreement No. 6 under NEP's FERC Electric Tariff, Original Volume No. 3. According to NEP, the purpose of the supplement is to permit Montaup Electric Company to wheel periodic short-term power purchases from Green Mountain Power Corporation and Central Vermont Public Service Corporation across NEP's system.

Comment date: October 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Co.

[Docket No. ER93–725–000]

Take notice that on September 29, 1993, Florida Power & Light Company filed supplemental information regarding its filing in the above-captioned docket.

Comment date: October 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corp.

[Docket No. ER93–931–000]

Take notice that on September 27, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an amendment to its filing in Docket No. ER93–831–000, which affects an agreement between Niagara Mohawk and the Village of Bergen, New York (Bergen). This agreement provides for a new transmission arrangement and also provides for a power sales agreement from Niagara Mohawk to satisfy Bergen's electrical requirements in excess of its NYPA purchases.

The proposed amendment is based on discussions with FERC Staff and modifies certain rate ceiling provisions. Niagara Mohawk proposes an original effective date of October 1, 1993.

Copies of this filing were served upon the Public Service Commission of the State of New York and the Village of Bergen.

Comment date: October 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. PSI Energy, Inc.

[Docket No. ER93–806–000]

Take notice that on September 24, 1993, PSI Energy, Inc. (PSI) and The City of Piqua, Ohio on September 24, 1993, tendered for filing corrected Service Schedules to the amended Service Schedules in the FERC filing in Docket No. ER93–806–000.

Copies of this filing were served on The City of Piqua, Ohio, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: October 18, 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. 93–24886 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–14–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Algonquin Gas Transmission Company (Algonquin) tendered for filing proposed changes in its FERC Gas Tariff, Fourth Revised Volume No. 1, as set forth in the revised tariff sheets:

1st Revised 2 Sub Original Sheet No. 600
1st Revised 2 Sub Original Sheet No. 658
1st Revised 2 Sub Original Sheet No. 673
1st Revised 2 Sub Original Sheet No. 674
1st Revised 2 Sub Original Sheet No. 709
1st Revised 2 Sub Original Sheet No. 710
1st Revised 2 Sub Original Sheet No. 711
1st Revised 2 Sub Original Sheet No. 712
Sheet Nos. 713–798

The proposed effective date of the tariff sheets is November 1, 1993.

Algonquin states that the purpose of this filing is to replace Algonquin's electronic bulletin board and TRACTS with a single system to be combined with Texas Eastern Transmission Corporation's LINK system.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24887 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–11–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1993:

Second Revised Sheet No. 20A
First Revised Sheet No. 98
Sheet No. 99

Algonquin states that the purpose of this filing is to establish the balance and allocation of certain Order No. 636 transition costs to be paid by Algonquin to Texas Eastern Transmission Corporation (Texas Eastern) pursuant to Texas Eastern's September 30, 1993 proposal for the recovery of standard costs.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24888 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–10–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Original Sheet No. 96A, with a proposed effective date of November 1, 1993.

Algonquin states that the purpose of this filing is to establish the balance and allocation of contract assignment program costs to be paid by Algonquin to Texas Eastern Transmission Corporation (Texas Eastern) pursuant to Texas Eastern's second direct bill of contract assignment program costs filed on October 1, 1993.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24889 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–14–000, et al., RP93–126–000, et al., RP87–14–000, et al., RP86–41–000, et al.]

Algonquin Gas Transmission Co.; Informal Settlement Conference

October 5, 1993.

Take notice that an informal settlement conference will be convened in these proceedings on October 14, 1993 at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or David R. Cain (202) 208–0917.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24890 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–207–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on September 30, 1993 ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, the following tariff sheets with a proposed effective date of November 1, 1993:

Second Revised Volume No. 1

Second Revised Sheet No. 17
Original Sheet No. 17A

Original Volume No. 2

Twenty-Third Revised Sheet Nos. 16–19
Twenty-Fifth Revised Sheet No. 20
Twenty-Fourth Revised Sheet No. 21
Twenty-Second Revised Sheet No. 22
Original Sheet No. 22A

ANR states that the referenced tariff sheets are being submitted pursuant to Article VIII of ANR's Interim Settlement that was approved by the Commission in the captioned proceeding. See ANR Pipeline Company, 60 FERC (CCH) 61,145 (1992). ANR has submitted revised tariff sheets to become effective November 1, 1993.

ANR states that a copy of this filing have been served by mail on all parties to these proceedings.

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 § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24891 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–17–000]

Arkla Energy Resource Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Arkla Energy Resources Company (AER), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet to become effective November 1, 1993:

First Revised Sheet No. 105
First Revised Sheet No. 106

AER states that the revised tariff sheets set the first tier tolerance level for cash balancing at 5.35%, instead of the 5% level contained in the original sheets which would otherwise take effect automatically as of November 1, 1993 by operating of AER's tariffs.

On September 20, 1993, AER filed receipt volume data (Data) that reflected a 5.35% accuracy level between AER's mid-month information to shippers and actual receipts, for the period May 1, 1993 to August 31, 1993 ("Test Period"). Pursuant to the Commission's August 2, 1993 order in this docket and AER's approved tariffs, AER is setting its first tier cash balancing tolerance level of 5.35%, effective November 1, 1993, in accordance with the results reflected in the Data.

AER states that copies of the filing have been served upon AER's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24892 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

East Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

[Docket Nos. RP94–13–000 and TM94–2–2–000]

October 5, 1993.

Take notice that on October 1, 1993, East Tennessee Natural Gas Company (East Tennessee) filed a limited rate adjustment to direct bill the balance in its Account 191 to firm sales customers upon implementation of East Tennessee's restructured tariff in Docket No. RS92–33. The amounts to be billed to firm sales customers following implementation are set forth in Original Sheet No. 6 of East Tennessee's Second Revised Volume No. 1.

East Tennessee states that the tariff sheet which provides for the mechanism pursuant to which those costs are to be recovered was accepted by the Commission in Docket No. RS92–33, *et al.* East Tennessee states that the purpose of the filing in this docket is to set forth the lump sum amounts and related monthly payments that will be charged by East Tennessee pursuant to Section 23 for the annual period commencing November 1, 1993. East Tennessee states that pursuant to this provision, the amounts to be billed will be adjusted after the six-month period following implementation.

East Tennessee also states that it is filing to adjust its Transportation Cost Rate adjustment pursuant to Section 25 of the General Terms and Conditions. The adjustments are set forth in Substitute Original Sheet No. 4, Second Revised Volume No. 1.

East Tennessee requests an effective date of November 1, 1993, or alternatively the date established by Commission order for implementation of East Tennessee's restructuring.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before October 13, 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 this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24893 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94 12–000]

El Paso Natural Gas Co.: Tariff Filing

October 5, 1993.

Take notice that on October 1, 1993, El Paso Natural Gas Company (El Paso), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A and Third Revised Volume No. 2, the following tariff sheets, with a proposed effective date of November 1, 1993:

First Revised Volume No. 1–A

Sixteenth Revised Sheet No. 20
Sixteenth Revised Sheet No. 21
Tenth Revised Sheet No. 23

Third Revised Volume No. 2

Twenty-eighth Revised Sheet No. 1–D.2

El Paso states that it has tendered Statement of Rates tariff sheets applicable to Rate Schedules T–3, FTS–S and T–1 contained in its Volume No. 1–A Tariff, which reflect an adjustment to El Paso's transportation rates to include the costs associated with the construction of the East-End Flexibility Project, to become effective November 1, 1993.

El Paso states that on April 27, 1992, it filed an application at Docket No. CP92–466–000, pursuant to Section 7(c) of the NGA, for authorization to construct and operate new compression and pipeline facilities on the east end of its system, in order to provide increased operational flexibility.

El Paso states that on January 29, 1993 at Docket Nos. RP91–188–000, RP92–214–000 and RS92–60–000, et al., it filed an Offer of Settlement in Restructuring, Rate and Related Proceedings (Settlement). El Paso states that Article IX, Certificate Proceedings, provides that the order accepting and approving Settlement shall be deemed to grant a certificate of public convenience and necessity authorizing the construction and operation of the facilities proposed at Docket No. CP92–466–000. El Paso states that Article 9.2 specifically provides that upon the in-service date of such project, El Paso

shall be entitled, without filing a new general system-wide rate case, to adjust the settlement reservation charges by $0.0013 per dth ($0.03954 per dth on a monthly basis) to reflect the additional costs of such facility and to make a corresponding change of $0.0013 per dth in rates under Rate Schedules T–1 and FTS–S.

El Paso states that on April 30, 1993, the Commission issued an "Order Accepting Settlement and Compliance Filing, Subject to Modifications," at Docket No. RS92–60–011, et al. El Paso states that ordering paragraph (E) of the order granted El Paso a certificate of public convenience and necessity authorizing the construction and operation of the East-End Flexibility Project. El Paso further states that the order permitted it to roll in the costs of the project in the context of the Settlement proceeding. El Paso states that on August 31, 1993, the Commission issued an "Order Denying Rehearing, Granting and Denying Clarification, Terminating Technical Conference in Part, Accepting Revised Compliance Filings, and Granting Limited Waiver," at Docket No. RS92–60–000, et al. El Paso also states that by letter dated September 27, 1993, the Director, Office of Pipeline and Producer Regulation, advised El Paso that its restructuring proposal, as modified by the Commission's orders, will be effective on October 1, 1993.

El Paso requested that the Commission accept the tendered tariff sheets for filing and permit them to become effective on November 1, 1993, which is not less than thirty (30) days after the date of the filing.

El Paso states that copies were served upon all interstate pipeline system transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Regulations. All such motions or protests should be filed on or before October 13, 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 the filing are on file with the Commission and are available for public inspection in the public conference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24894 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–2–000]

Koch Gateway Pipeline Co.; Notice of Request Under Blanket Authorization

October 5, 1993.

Take notice that on October 1, 1993, Koch Gateway Pipeline Company (Gateway), P.O. Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP94–2–000, 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 install a four-inch tap and related facilities to enable Gateway to provide a delivery point to serve Frito Lay, Inc. (Frito Lay), under the authorization issued in Docket No. CP82–430–000 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.

Gateway states that it seeks to install a four-inch tap, riser and ball valve to connect Frito Lay's Jackson Plant on Gateway's Index 301-22-1 line at M.P. 0.6, Hinds County, Mississippi. It is stated that these facilities are required to comply with the terms of an interruptible transportation agreement between Frito Lay and Gateway. Gateway states that construction for the proposed project will be within Gateway's existing right of way and the area of ground disturbed by this construction activity will be approximately 8 feet by 10 feet. It is estimated that the cost for installation of these facilities is $8,151.

Gateway states that the proposed installation of facilities for Frito Lay will not have an impact on Gateway's curtailment plan because the proposed service is interruptible in nature. It is stated that, additionally, the quantities to be delivered at the delivery point will be within the certificated entitlements of the shipper for whom the transportation service will be performed.

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. 93–24895 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–760–000]

Niagara Mohawk Power Corp.; Notice of Filing

October 5, 1993.

Take notice that on September 16, 1993, New York State Electric & Gas Corporation (NYSEG), tendered for filing a Certificate of Concurrence in Docket No. ER93–760–000. In this docket, Niagara Mohawk Power Corporation (Niagara Mohawk) filed a supplement to its Rate Schedule FERC No. 165 pursuant to which NYSEG and Niagara Mohawk provide wheeling service to one another.

The supplement proposes an increase in the charges for wheeling service provided by each utility, and these charges are proposed to be effective September 1, 1993 and will be in place for a two year period.

NYSEG requests that September 1, 1993 be allowed as the effective date of the filing and requests waiver of the notice requirement for good cause shown.

Copies of NYSEG's filing were served upon the Public Service Commission of the State of New York and Niagara Mohawk.

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 October 18, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24896 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–3–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Original Sheet No. 68, with a proposed effective date of November 1, 1993.

Northern states that the filing establishes the direct bill amounts by shipper resulting from the Reverse Auction Cost Recovery Mechanism established in Northern's Global Settlement. Northern states that Original Sheet No. 68 reflects these amounts in its Tariff and will commence billing such amounts effective November 1, 1993.

Northern notes that copies of this filing were served upon the Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceedings. 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24897 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–8–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Original Sheet No. 67, with a proposed effective date of November 1, 1993.

Northern states that the filing supplements Northern's September 27, 1993, filing in this docket, which set forth the direct bill amounts by shipper resulting from the termination of the ANGTS Rate Adjustment Mechanism effective November 1, 1993, pursuant to First Revised Sheet No. 261 of its Fourth Revised Volume No. 1. Northern has filed Original Sheet No. 67 to include the monthly direct bill amounts by customer in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that copies of this filing were served upon Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceedings. 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24898 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–6–000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets with a proposed effective date of November 1, 1993:

First Revised Sheet No. 50
First Revised Sheet No. 51
First Revised Sheet No. 53

Northern states that the filing establishes the initial Stranded Account No. 858 surcharge to recover costs incurred by Northern related to its contracts with third-party pipelines. Therefore, Northern has filed First Revised Sheet Nos. 50, 51, and 53 to establish this surcharge effective November 1, 1993.

Northern states that copies of this filing were served upon the company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceedings. 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24899 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–206–000]

Northern Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on September 30 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, First Revised Sheet No. 245, with a proposed effective date of November 1, 1993.

Northern states that the filing represents the resolution of the issue of Carlton receipt point supply needed to meet the firm Market Area requirements.

Northern states that copies of this filing were served upon the Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. All 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 proceedings. 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24900 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–5–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1993:

Original Sheet No. 66
Original Sheet No. 69

Northern states that the filing establishes the direct bill amounts by shipper resulting from the termination of the Purchased Gas Adjustment (PGA). Northern further states that the direct bill amounts shown on Original Sheet No. 66 are based upon the post-July 1991 Account No. 191 balance as of October 31, 1993.

Northern states that copies of this filing were served upon the Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. Protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant a party 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24901 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–2–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1993:

First Revised Sheet No. 240
Second Revised Sheet No. 245

Northern states that First Revised Sheet No. 240 and Second Revised Sheet No. 245 of its Fifth Revised Volume No. 1 are being filed to provide that Northern may recover any future upstream Account No. 858 transportation costs under its Stranded Account No. 858 Cost Recovery Mechanism should any capacity assigned through the Reverse Auction process revert to Northern.

Northern states that copies of this filing were served upon Northern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceedings. 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24902 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–7–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets with a proposed effective date of November 1, 1993:

First Revised Sheet No. 50
First Revised Sheet No. 51
First Revised Sheet No. 53

Northern states that the filing establishes the initial surcharge to recover costs incurred by Northern related to the realignment of its gas supply contracts. Therefore, Northern has filed First Revised Sheet Nos. 50, 51, and 53 to establish the GSR surcharge effective November 1, 1993.

Northern states that copies of this filing were served upon the company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceedings. 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24903 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–4–000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets, with a proposed effective date of October 1, 1993:

First Revised Sheet No. 50
First Revised Sheet No. 51
First Revised Sheet No. 52
First Revised Sheet No. 53
First Revised Sheet No. 59
First Revised Sheet No. 60
141st Revised Sheet No. 1C
Sixteenth Revised Sheet No. 1C.a

Northern states that the filing revises Northern's Market Area TF/TFX demand rates to reflect the System Management Service (SMS) demand revenue credit based upon the SMS requirements of Northern's customers. Northern further states that the filing also establishes the revised Annual Charge Adjustment (ACA) rate of $0.0026 in Northern's Fifth Revised Volume No. 1, and in its Original Volume No. 2 to the extent these rates change, effective November 1, 1993.

Northern states that copies of this filing were served upon Northern's

customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceedings. 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24904 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–9–000]

Pacific Gas Transmission Co.; Request for Waiver of Quarterly PGA Filing

October 5, 1993.

Take notice that on October 1, 1993, Pacific Gas Transmission Company (PGT), filed with the Commission a letter requesting that the Commission waive its regulations in requiring PGT to filed its Purchased Gas Adjustment (PGA).

PGT states that the Commission has voted in PGT's restructuring proceeding, Docket No. RS92–46–004, to permit PGT to implement the restructuring required by Order No. 636, *et seq.*, including the unbundling of sales service, on November 1, 1993. PGT states that as part of the implementation of this restructuring, the PGA mechanism will also be terminated on November 1, 1993. PGT states that the current adjustment PGT would normally file at this time will never become effective.

PGT states that the preparation and submission of a quarterly PGA filing to establish a current adjustment as of November 1, 1993 is unnecessary. PGT is not submitting such a filing.

PGT states that a copy of the letter is being served on PGT's sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 1993. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceedings. 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 inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24905 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–4–000]

Panhandle Eastern Pipeline Co., Notice of Application

October 5, 1993.

Take notice that on October 1, 1993, Panhandle Eastern Pipeline Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–4–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation service associated with direct sales service to 31 individual direct industrial sales customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that on May 1, 1993, it implemented its restructured service as approved in Docket No. RS92–22–000, *et al.*, and is no longer providing a sales service as such. Panhandle further states that prior to the restructuring the direct industrial customers had been purchasing some of their gas requirements from Panhandle under individual certificate authorizations. Panhandle asserts that since it is no longer providing a sales service, the individual certificate authorizations are no longer required. Panhandle is providing restructured transportation service for the direct industrial customers that requested the continuation of service under the restructured tariff, it is stated.

Panhandle further states that it does not propose to abandon any facilities herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 26, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24906 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–16–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1993:

Original Sheet No. 168
Original Sheet No. 169
Original Sheet No. 170
Sheet Nos. 171–199

Texas Eastern states that the above tariff sheets are filed as a limited application pursuant to Section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988). Texas Eastern states that the purpose of the filing is to permit Texas Eastern to recover certain costs incurred by Texas Eastern following the termination of Texas Eastern's Gas Supply Inventory Reservation Charge (GSIRC) on November 1, 1992, in light of Order No.

636. Texas Eastern states that these costs were incurred as a direct consequence of Texas Eastern's need to continue to stand ready to meet its customers' purchase rights under their service agreements with Texas Eastern during the period following the termination of the GSIRC on November 1 and the implementation of Order No. 636 on Texas Eastern's system.

Texas Eastern states that this filing covers a total amount of $5,213,081.75 for the period from March 1, 1993 through May 31, 1993, which are the costs that are currently known and measurable and recorded on the books of Texas Eastern, plus applicable carrying charges. Texas Eastern proposes to recover its costs through a direct bill mechanism analogous to that employed for recovering Account No. 191 costs.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 13, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24907 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–181–000]

Texas Eastern Transmission Corp.; Technical Conference

October 5, 1993.

In the Commission's order issued on September 30, 1993 the Commission ordered that a technical conference be convened to resolve issues raised by the filing. The conference to address the issues has been scheduled for Tuesday, December 7, 1993, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24908 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–743–000]

Trunkline Gas Co. and Texas Gas Transmission Corp.; Notice of Application

October 5, 1993.

Take notice that on September 28, 1993, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, and Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302 filed an application with the Commission in Docket No. CP93–743–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon two natural gas exchange services which were authorized in Docket Nos. CP62–221–000 [1] and CP72–53–000 [2], all as more fully set forth in the application which is open to public inspection.

Trunkline and Texas Gas propose to abandon two interruptible exchange services no longer needed and performed under Trunkline's FERC Rate Schedules X–3 and E–4 and Texas Gas' FERC Rate Schedules X–30 and X–40, respectively. Trunkline and Texas Gas exchange gas at an interconnection of their pipeline systems near Trunkline's Dyersburg, Dyer County, Tennessee, compressor station under their respective Rate Schedules X–3 and X–30. Trunkline also delivers up to 5,000 Mcf of natural gas per day to Texas Gas in the Lake Misere Field, Cameron Parish, Louisiana, under its Rate Schedule E–4. Texas Gas redelivers equivalent volumes under its Rate Schedule X–40 to Trunkline at (1) the tailgate of Continental Oil Company's Egan Plant, Egan, Acadia Parish, Louisiana; (2) Union Oil Company of California's facilities in Vermilion Parish, Louisiana; and (3) Texas gas' metering facilities at North Fresh Water Bayou Field, Vermilion Parish, Louisiana.

Neither Trunkline nor Texas Gas proposes to abandon any facilities in this proposal.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 26, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for Trunkline or Texas Gas to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24909 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–15–000]

Viking Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 5, 1993.

Take notice that on October 1, 1993, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of November 1, 1993:

First Revised Sheet No. 62
First Revised Sheet No. 63
First Revised Sheet No. 64
First Revised Sheet No. 65

Viking states that the purpose of its filing is to amend the "Service Lateral Line Policy" set forth in Article XVI of the General Terms and Conditions of the proposed tariff Viking filed in Docket

[1] See order at 28 FPC 12 (1962).

[2] See order at 47 FPC 143 (1972).

No. RS92–52. Viking has proposed an effective date of November 1, 1993, to coincide with the proposed effective date of Viking's restructured tariff.

Viking states that copies of the filing have been mailed to all of its customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions should be filed on or before October 13, 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24910 Filed 10–8–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–78–NG]

Valero Industrial Gas, L.P.; Blanket Authorization To Import Natural Gas From and Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authorization to Valero Industrial Gas, L.P. to import and export up to a combined total of 300 billion cubic feet of natural gas from and to Mexico over a two-year period beginning on date of the first delivery of either imports or exports after October 22, 1993.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on September 29, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–24965 Filed 10–8–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4784–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No. 1640.01; 1993 Coastal Oil and Gas Questionnaire; was approved 07/26/93; OMB No. 2040–0160; expires 01/31/95.

EPA ICR No. 0113.05; National Emission Standard for Mercury (part 61, subpart E); was approved 08/31/93; OMB No. 2060–0097; expires 08/31/96.

EPA ICR No. 0111.07; National Emission Standard for Asbestos, Reporting and Recordkeeping Requirements—part 61, subpart M; was approved 08/31/93; OMB No. 2060–0101; expires 08/31/96.

EPA ICR No. 1547.03; The Pesticides Enforcement and Applicator Certification Accomplishments Reporting Form; was approved 08/31/93; OMB No. 2070–0113; expires 08/31/96.

EPA ICR 1627.01; Chesapeake Bay Attitude Survey; was approved 09/02/93; OMB No. 2040–0165; expires 09/30/96.

EPA ICR No. 0794.05; Notification of Substantial Risk of Injury to Health and the Environment under section 8(e) of the Toxic Substances Control Act (TSCA); was approved 09/17/93; OMB No. 2070–0046; expires 12/31/94.

EPA ICR No. 1520.03; Recall of Suspended and Canceled Pesticides; was approved 09/16/93; OMB No. 2070–0110; expires 09/30/96.

OMB Extension of Expiration Dates

EPA ICR No. 1039; Monthly Progress Reports; OMB No. 2030–0005; expiration date was extended to 03/31/94.

EPA ICR No. 0909; Information Requirements for Construction Grants Delegation to States; expiration date was extended to 02/28/94.

Dated: October 5, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–24962 Filed 10–8–93; 8:45 am]

BILLING CODE 6560–50–F

[PF–583; FRL–4650–9]

Sandoz Agro, Inc.; Amended Pesticide Petitions for Dicamba

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document provides notice of an amended pesticide petition (PP 3F2794) for a tolerance for the combined residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its 5-hydroxy metabolite (3,6-dichloro-5-hydroxy-*o*-anisic acid), resulting from the application of the sodium salt, in or on the raw agricultural commodity (RAC) cottonseed at 3.0 parts per million (ppm) and an amended feed additive petition (FAP 4H5439) for the same chemicals in or on the animal feed commodity cottonseed meal at 6.0 ppm. The petitions were filed by Sandoz Agro, Inc., to establish the maximum level for residues of the herbicide in or on this RAC and animal feed commodity.

DATES: Comments, identified by the document control number, [PF-583], must be recieved on or before October 27, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 2460. In Person, deliver comments to rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of comment that does contain CBI must be submitted for inclusion in

the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (H7505C), Office of Pesticide Programs, Environmentral Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 1, 1984 (49 FR 30790), EPA issued notices that announced that Velsicol Chemical Corp., 341 East Ohio St., Chicago, IL 60611, proposed amending 40 CFR 180.227 by establishing a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for the combined residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its metabolite 3,6-dichloro-5-hydroxy-*o*-anisic acid in or on the RAC cottonseed at 3.0 ppm (pesticide petition (PP) 3F2794) and amending 21 CFR part 561 by establishing a food additive regulation under section 409 of the FFDCA, 21 U.S.C. 348, permitting residues of dicamba in or on cottonseed meal at 6.0 ppm (feed additive petition (FAP) 4H5439).

No comments were received in response to the notices of filing.

The Agency subsequently issued a recodification document, published in the **Federal Register** of June 29, 1988 (53 FR 24688), redesignating 21 CFR part 561 under 40 CFR part 186 and redesignating dicamba as 40 CFR 186.1800. Velsicol Chemical Corp. was purchased by Sandoz Crop Protection Corp., Corporate Headquarters, 1300 East Touhy Ave., Des Plaines, IL 60018.

The petitioner subsequently amended PP 3F2794 and FAP 4H5439, proposing the establishment of tolerances for residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its 5-hydroxy metabolite, resulting from the application of the sodium salt, on the RAC cottonseed at 3.0 ppm and the animal feed item cottonseed meal at 6.0 ppm. The earlier petition proposing the use of the dimethylamine (DMA) salt was made for the purpose of "ameliorat(ing) the Agency's concerns over toxicological issues [i.e. carcinogenicity] from nitrosamine in the DMA salt formulation."

Interested persons are invited to submit written comments on the amended petitions. Documents that will be considered are available to the public in the Office of Pesticide Programs docket at the Public Response and Program Resources Branch, at the address given above. Comments must bear a notation indicating the document control number, [PF-583]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests.

Dated: October 1, 1993.

Steven L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–24961 Filed 10–8–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

[Petition No. P75–93]

Petition of the United States Atlantic and Gulf/Hispaniola Steamship Freight Association and the United States Atlantic and Gulf/Southeastern Caribbean Freight Association; Petition for Temporary Exemption From Electronic Tariff Filing Requirements; Filing of Petition

Notice is hereby given of the filing of a petition by the United States Atlantic and Gulf/Hispaniola Steamship Freight Association and the United States Atlantic and Gulf/Southeastern Caribbean Freight Association pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the October 8, 1993, electronic filing deadline.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than October 15, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on counsel for petitioners, Nathan J. Bayer, Esq., Sher & Blackwell, 1255 23rd Street NW., suite 500, Washington, DC 20037.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–24855 Filed 10–8–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Atlantic Community Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have 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)).

Each 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 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 1, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Atlantic Community Bancorp, Inc., Rocky Mount, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Unity Bank & Trust Company, Rocky Mount, North Carolina.

2. KS Bancorp, Inc., Kenly, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Kenly Savings Bank, Inc., Kenly, North Carolina.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104

Marietta Street, N.W., Atlanta, Georgia 30303:

1. AmSouth Bancorporation, Birmingham, Alabama; to merge with Citizens National Corporation, Naples, Florida, and thereby indirectly acquire Citizens National Bank, Naples, Florida.

2. SouthTrust Corporation, Birmingham, Alabama; to merge with BMR Financial Group, inc., Atlanta, Georgia, and thereby indirectly acquire Ameribank, Clearwater, Florida, and Community First Bank of Central Florida, Winter Garden, Florida.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Arvest Bank Group, Inc., Bentonville, Arkansas; to acquire at least 63.78 percent of the voting shares of Bank of Bentonville, Bentonville, Arkansas.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. FSB Bancshares, Inc., Clute, Texas, to become a bank holding company by acquiring 100 percent of the voting shares of FSB Bancshares of Delware, Inc. Wilmington, Delaware, and thereby indirectly acquire First State Bank, Clute, Texas. In connection with this application, FSB Bancshares of Delaware, Inc. has applied to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Clute, Texas.

Board of Governors of the Federal Reserve System, October 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24930 Filed 10-8-93; 8:45 am]

BILLING CODE 6210-01-F

Chemical Banking Corporation, New York, New York; Application to Engage in Nonbanking Activities

Chemical Banking Corporation, New York, New York (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through its wholly owned subsidiary, Chemical Securities Inc., New York, New York (Company), a broker-dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), in underwriting and dealing in, to a limited extent, all types of equity securities, including without limitation, common stock, preferred stock, American Depositary Receipts, options, limited partnership units, securities issued by closed-end investment companies but not securities issued by open-end investment companies, and other direct and indirect equity ownership interests in corporations and other entities. Applicant proposes to conduct these activities throughout the United States and the world.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 Federal Register 806 (1984).

The Board previously has approved, by order, underwriting and dealing in, to a limited extent, all types of debt and equity securities. *J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192 (1989) (1989 Section 20 Order), *as modified by* Order dated September 21, 1989, 75 Federal Reserve Bulletin 751 (1989) (Modification Order). Applicant has stated that it will conduct the proposed underwriting and dealing activities using the same methods and procedures, and subject to the same prudential limitations established by the Board in the 1989 Section 20 Order, as modified by the Modification Order, including the Board's 10 percent revenue limitation on such activities. For this reason, Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), which prohibits the affiliation of a state member bank with any company principally engaged in the underwriting, public sale, or distribution of securities.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition, lower financing costs, and more innovative financing. Applicant also believes that approval of this application will allow Company to provide a wider range of services and added convenience to its customers. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than October 29, 1993. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why 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.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, October 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24931 Filed 10-8-93; 8:45 am]

BILLING CODE 6210-01-F

The Dai-Ichi Kangyo Bank, Limited; Application to Engage in Certain Nonbanking Activities

The Dai-Ichi Kangyo Bank, Limited, Tokyo, Japan (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23 of the Board's Regulation Y, 12 C.F.R. 225.23, to engage through its wholly owned subsidiary, DKB Securities Corporation, New York, New York (Company), in the purchase and sale for its own account of certain futures, options, and options on futures contracts with respect to certain bank-eligible securities and money market instruments, for purposes other than hedging.[1]

Applicant seeks approval to conduct the proposed activities throughout the United States, and plans to conduct the activities on a world-wide basis.

Closely Related to Banking Standard

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. In determining whether a proposed activity is closely related to banking for purposes of the BHC Act, the Board considers, *inter alia*, the matters set forth in *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F.2d 1229 (D.C. Cir. 1975). These considerations are

(1) whether banks generally have in fact provided the proposed services;

(2) whether banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed services; and

(3) whether banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *See* 516 F.2d at 1237. In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. *Board Statement Regarding Regulation Y*, 49 FR 806 (1984).

Applicant states that the Board previously has determined by order that the proposed activities are closely related to banking. *See Swiss Bank Corporation*, 77 Federal Reserve Bulletin 759 (1991). Applicant further states that banks conduct the proposed trading activity; that the Office of the Comptroller of the Currency has permitted national banks to conduct such activity; and that banks are equipped to engage in the proposed activity and have developed relevant expertise in such matters as judging and predicting interest rate movements.

Proper Incident to Banking Standard

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. 12 U.S.C. 1843(c)(8).

Applicant believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicant maintains that the proposal will enhance market competition, increase market liquidity, and enable Company to operate more efficiently in its government securities business. In addition, Applicant states that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than November 3, 1993. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why 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. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, October 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24932 Filed 10-8-93; 8:45 am]

BILLING CODE 6210-01-F

DFC Acquisition Corporation II; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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 acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these 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,

[1] The specific futures, options, and options on futures contracts which Applicant proposes to purchase and sell through Company are substantially similar to those contracts listed in the appendices to the Board's Order in *Swiss Bank Corporation*, 77 Federal Reserve Bulletin 759 (1991).

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 November 1, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. DFC Acquisition Corporation II, Kansas City, Missouri; to become a bank holding company by acquiring 98.06 percent of the voting shares of Dickinson Financial Corporation, Kansas City, Missouri, and thereby acquire Army National Bank, Fort Leavenworth, Kansas, and Bank Midwest, N.A., Maryville, Missouri.

DFC Acquisition Corporation II, Kansas City, Missouri; has also applied to acquire Livingston Life Insurance Company, Kansas City, Missouri, and thereby engage in reinsuring credit-related insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24928 Filed 10-8-93; 8:45 am]

BILLING CODE 6210-01-F

Keystone Financial, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) 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 acquire or control voting securities or assets of a company engaged 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.

Each 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.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than November 1, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Keystone Financial, Inc., Harrisburg, Pennsylvania; to acquire Elmwood Bancorp, Inc., Media, Pennsylvania, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Citizens Holding Company, Muskogee, Oklahoma; to acquire DigiSource, Inc., Fayetteville, Arkansas, and thereby engage throughy a joint venture in providing data processing services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24933 Filed 10-8-93; 8:45 am]

BILLING CODE 6210-01-F

Dr. William Steinberg, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 28, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Dr. William Steinberg, and Jill Steinberg, Meadowbrook, Pennsylvania; who currently own 24.82 percent, to acquire additional shares for a total of over 25 percent of the voting shares of Continental Bancorporation, Laurel, New Jersey.

2. Arthur Toll, Ambler, Pennsylvania, and Linda Toll, Ambler, Pennsylvania; to acquire more than 10 percent and less than 25 percent of the voting shares of First Bank of Philadelphia, Philadelphia, Pennsylvania.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Harold Eugene Lieding, Vienna, Virginia; to acquire an additional 16.31 percent of the voting shares of Heritage Bank, McLean, Virginia, for a total of 16.39 percent.

Board of Governors of the Federal Reserve System, October 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-24929 Filed 10-8-93; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 902-3178]

Diet Center, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final

Commission approval, would prohibit, among other things, a Pittsburgh, Pennsylvania diet program company from misrepresenting the performance or safety of any weight-loss program it offers in the future; require it to have competent and reliable scientific evidence to back up future claims it makes about weight loss and maintenance; require it to include in conjunction with maintenance success claims, the statement "For many dieters, weight loss is temporary;" and require it to disclose to its customers that failure to eat all of the food recommended in the program may put their health at risk.

DATES: Comments must be received on or before December 13, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Kathryn C. Nielsen, Seattle Regional Office, Federal Trade Commission, 2806 Federal Building, 915 Second Ave., Seattle WA, 98174, (206) 220–6350.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Diet Center, Inc., a corporation, hereafter sometimes referred to as proposed respondent or respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Diet Center, Inc., by its duly authorized officers and its attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Diet Center, Inc. is an Idaho corporation, with its offices and principal place of business at 921 Penn Avenue, Pittsburgh, Pennsylvania 15222.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the attached draft complaint and the following order. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

A. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, surveys, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession or science to yield accurate and reliable results;

B. "Weight loss program" shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. "Broadcast medium" shall mean any radio or television broadcast, cablecast, home video or theatrical release.

D. For any Order-required disclosure in a print medium to be made "clearly and prominently," or in a "clear and prominent" manner, it must be given both in the same type style and in: (1) Twelve point type where the representation that triggers the disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type. For any Order-required disclosure given orally in a broadcast medium to be made "clearly and prominently," or in a "clear and prominent" manner, the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure.

E. "Short broadcast advertisement" shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I

It is ordered, That respondent Diet Center, Inc., a corporation, its

successors and assigns, and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation; *Provided, further,* That for any representation that:

(1) Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants of respondent's program, said evidence shall, at a minimum, be based on a representative sample of:

(a) All participants who have entered the program, where the representation relates to such persons; *Provided, however,* That the required sample may exclude those participants who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy or change of residence; or

(b) All participants who have completed a particular phase of the program or the entire program, where the representation *only* relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance phase of respondent's program or earlier termination, as applicable; and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

(a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent; or

(b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements of testimonials referred to in paragraph I.E., that participants of any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary;" *Provided, further,* That respondent shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondent's weight loss program; *Provided, however,* That a mere statement about the existence, design or content of a maintenance program shall not, without more, be considered a representation that participants on any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D., and except through endorsements or testimonials referred to in paragraph I.E., that participants on any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation the following information:

(1) The average percentage of weight loss maintained by those participants;

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program; *Provided, further,* That if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

(3) If the participant population referred to is not representative of the general participant population for respondent's programs:

(a) The proportion of the total participant population in respondent's programs that those participants represent, expressed in terms of a percentage or actual numbers of participants; or

(b) The statement: "Diet Center makes no claim that this [these] result[s] is [are] representative of all participants in the Diet Center Program."

Provided, further, That compliance with the obligations of this Paragraph I.C. in no way relieves respondent of the requirement under Paragraph I.A. of the Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements that participants of any weight loss program have successfully maintained weight loss unless respondent:

(1) Includes, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our outlets for details about our maintenance record;"

(2) For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, complies with the following procedures upon the first presentation of any form asking for information from a potential customer, but in any event before such person has entered into any agreement with respondent:

(a) Gives to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C.(1)–(3) of this Order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 pt. bold), lead-in (Times Roman 12 pt.), disclosures (Helvetica 14 pt. bold), acknowledgment language (Times Roman 12 pt.) and signature block therein: *Provided, further,* That no information in addition to that required to be included in the document required by this subparagraph I.D.(2) shall be included therein:

Maintenance Information

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here

_____

_____

_____

_____

For many dieters, weight loss is temporary.
I have read this notice.

_____

(Client Signature)

_____

(Date)

(b) Requires each potential customer to sign such document; and

(c) Gives each customer a copy of such document;

Provided, further, That if any potential participant who does not then participate in the program refuses to sign or accept a copy of such document, respondent shall so indicate on such document and shall not, for that reason alone, be found in breach of this subparagraph I.D.(2); and

(3) Retains in each customer's file a copy of the signed maintenance notice required by this paragraph;

Provided, further, That: (1) Compliance with the obligations of this paragraph I.D. in no way relieves respondent of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss; and (2) respondent must comply with both paragraphs I.D. and I.C. of this Order if respondent includes in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term;"

Provided, however, That the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants on respondent's weight loss program if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants on respondent's weight loss programs generally achieve, unless respondent discloses, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss success or weight loss maintenance success:

(1) What the generally expected success would be for Diet Center customers in losing weight or maintaining achieved weight loss; *Provided, however,* In determining the generally expected success for Diet Center customers, respondent may exclude those customers who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy or change of residence; or

(2) One of the following statements:

(a) "You should not expect to experience these results."

(b) "This result is not typical. You may not do as well."

(c) "This result is not typical. You may be less successful."

(d) "_____'s success is not typical. You may not do as well."

(e) "_____'s experience is not typical. You may achieve less."

(f) "Results not typical."

(g) "Results not typical of program participants.";

Provided, further, That if endorsements or testimonials covered by this paragraph I.E. are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner and in immediate conjunction with the representation that triggers the disclosure.

Provided, however, That:

(1) For endorsements or testimonials about weight loss success, respondent can satisfy the requirements of subparagraph I.E.(1) by accurately disclosing the generally expected success in the following phrase: "Diet Center clients lose an average of _____ pounds over an average __-week treatment period;" and

(2) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraph I.E. (1) or (2) herein, respondent may substitute a clear and prominent disclosure of the percentage of all of respondent's customers that the group or subset defined in the advertisement represents;

F. Representing, directly or by implication, the typical rate or speed at which any participant on any weight loss program has experienced or will experience weight loss unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

G. Failing to disclose, clearly and prominently, either:

(1) To each participant who, after the first two weeks on the program, is experiencing average weekly weight loss that exceeds two percent (2.0%) of said participant's initial body weight, or three pounds (whichever is less), for at least two consecutive weeks; or

(2) In writing to all participants, when they enter the program, that failure to follow the program protocol and eat all of the varieties and amounts of food recommended may involve the risk of developing serious health complications.

H. Representing, directly or by implication, that participants on respondent's weight loss program will lose only fat and no lean body tissue.

I. Making any representation, directly or by implication, about the loss of fat or the loss of lean body tissue that participants on respondent's weight loss program will experience unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

J. Misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions or interpretations of any test or study.

K. Misrepresenting, directly or by implication, the performance, efficacy or safety of any weight loss program.

II

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries or any other change in the corporation(s) that may affect compliance obligations arising out of this Order; *Provided, however,* That nothing in this Order shall be interpreted to require respondent to notify the Commission regarding the addition or termination of franchisees or licensees.

III

It is further ordered, That respondent shall maintain for a period of three (3) years after the date the representation was last made, and upon request make available to the Federal Trade Commission staff for inspection and copying, all materials possessed and relied upon to substantiate any representation covered by this Order, and all test reports, studies, surveys or other information in its possession or control that contradicts, qualifies or calls into question any such representation, including complaints from consumers.

IV

It is further ordered, That respondent shall distribute a copy of this Order to each of its officers, agents, representatives, independent contractors and employees who is involved in the preparation and placement of advertisements or promotional materials or who has any responsibilities with respect to the subject matter of this Order; and, for a period of five (5) years from the date of entry of this Order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

V

It is further ordered, That:

A. Respondent shall distribute a copy of this Order to each of its franchisees and licensees and shall contractually

bind them to comply with the prohibitions and affirmative requirements of this Order; respondent may satisfy this contractual requirement by incorporating such Order requirements into its current Operations Manual; and

B. Respondent shall further make reasonable efforts to monitor its franchisees' and licensees' compliance with the Order provisions; respondent may satisfy this requirement by: (1) Taking reasonable steps to notify promptly any franchisee or licensee that respondent determines is failing materially or repeatedly to comply with any order provision; (2) providing the Federal Trade Commission with the name and address of the franchisee or licensee and the nature of the noncompliance if the franchisee or licensee fails to comply promptly with the relevant Order provision after being so notified; and (3) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, diligently pursuing reasonable and appropriate remedies available under its franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee;

Provided, however, That respondent's compliance with this Part shall constitute an affirmative defense to any civil penalty action arising from an act or practice of one of respondent's franchisees or licensees that violates this Order where respondent: (a) Has not authorized, approved or ratified that conduct; (b) has reported that conduct promptly to the Federal Trade Commission under this Part; and (c) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, has diligently pursued reasonable and appropriate remedies available under its franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee.

VI

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Diet Center, Inc. (hereinafter "Diet Center"), marketer of the Diet Center Program, a low-calorie diet (hereinafter "LCD") program. The Diet Center Program is offered to the public nationwide through franchised outlets.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondent deceptively advertised: (1) Its LCD program's success in helping customers achieve and maintain weight loss; (2) the typical rate or speed at which consumers will lose weight; and (3) customers on its LCD program lose only fat with little or no muscle loss. The complaint further alleges that Diet Center engaged in the deceptive practice of failing to warn clients it monitors of the health importance of following the diet protocol.

Success

The complaint against Diet Center alleges that the company failed to possess a reasonable basis for claims it made regarding the success of its customers in losing weight and avoiding the regain of weight lost during the program. Through consumer testimonials and other advertisements, Diet Center represented that its customers typically are successful in reaching their weight loss goals and in maintaining their weight loss achieved under the Diet Center Program either long-term or permanently.

The Commission believes that these success claims for customer weight loss and maintenance of achieved weight loss are deceptive because Diet Center at the time it made the claims did not possess adequate substantiation for those claims.

The proposed consent order seeks to address the alleged success misrepresentations cited in the accompanying complaint in several ways. First, the order (Part I.A.) requires the company to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the success of participants on any diet program in achieving or maintaining weight loss. To ensure compliance, the order further specifies what this level of evidence shall consist of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all participants using the program or any subset of those participants, that evidence shall be based on a representative sample of: (a) All participants who have entered the program, where the representation relates to such persons; or (b) all participants who have completed a particular phase of the program or the entire program, where the representation *only* relates to such persons.

(2) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the experience of participants who were followed for a period of at least two years after their completion of the respondent's program, including any periods of participation in respondent's maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall be based upon the experience of participants who were followed for a period of time after completing the program that is either: (a) Generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent; or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

Second, as measures to ensure future compliance, the proposed order requires the proposed respondent for any claim that participants of any diet program have successfully maintained weight loss to disclose the fact that "For many dieters, weight loss is temporary" (Part I.B.), as well as the following information relating to that claim (Part I.C.):

(1) The average percentage of weight loss maintained by those participants (e.g., "60% of achieved weight loss was maintained"),

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, and the fact that all or a portion of the time period covered includes participation in proposed respondent's maintenance program(s) that follows active weight loss, if that is the case—e.g., "participants maintain an average of 60% of weight loss 22 months after active weight loss (includes 18 months on maintenance program)", and

(3) Where the participant population referred to is not representative of the general participant population for that program, the proportion of the total participant population that those participants represent, expressed in

terms of a percentage or actual numbers of participants—e.g. "Participants on maintenance—30% of our customers—kept off an average of 66% of the weight for one year (includes time on maintenance program)" or, in lieu of that factual disclosure, the statement: "Diet Center makes no claim that this result is representative of all participants in the Diet Center Program."

Third, for maintenance success claims made in broadcast advertisements of thirty seconds or less duration, the proposed order (Part I.D.) requires that Diet Center, in lieu of making the factual disclosures required for such claims by Part I.C.: (1) Include in such advertisements the statement "Check at our outlets for details about our maintenance record."; and (2) provide consumers at point-of-sale with a required form that includes the factual disclosures required by Part I.C., which form must be signed by the client and retained in the company's client file. If any potential participant who does not then participate in the program refuses to sign or accept a copy of such document, respondent shall so indicate on such document.

The proposed order makes clear that this alternative disclosure requirement does not relieve Diet Center of the obligation to substantiate any maintenance success claim, in accordance with Part I.A. of the order, and it "takes back" the exception from full quantitative disclosures in short broadcast advertising if Diet Center makes a maintenance success claim that uses numbers or descriptive terms that convey a quantitative measure, such as "most of our customers maintain their weight loss long term." Diet Center in that case would have to make all the required disclosures in the ad and provide the disclosures at point-of-sale.

Fourth, for weight-loss and weight-loss maintenance success claims made through endorsements or testimonials that are not representative of what Diet Center Program participants generally achieve, the order (Part I.E.) requires that Diet Center disclose either what the generally expected success would be for Diet Center customers, or one of several alternative statements, such as "This result is not typical. You may be less successful," which explains the limited applicability of atypical testimonials in accordance with the Commission's "Guides Concerning Use of Endorsements and Testimonials in Advertising" 16 CFR 255.2(a). Under the proposed order, Diet Center may satisfy the requirements of the first disclosure concerning generally expected success by accurately disclosing those facts in the following format: "Diet Center clients lose an average of __pounds over an average __week treatment period."

Finally, the proposed order (Part I.K.) generally prohibits the company from misrepresenting the performance or efficacy of any weight loss program.

Speed of Weight Loss

The Commission's complaint further alleges that Diet Center failed to possess a reasonable basis for its claims that consumers will typically lose weight at a certain rate or speed. To address this practice, the proposed order (Part I.F.) prohibits Diet Center from representing the typical rate or speed with which any participant has or will experience weight loss unless proposed respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

Fat Versus Muscle Loss

The Commission's complaint alleges that Diet Center falsely represented that consumers who follow the Diet Center Program will lose only fat and no muscle. In addition, the complaint alleges that Diet Center falsely represented that competent and reliable evidence showed that 92% of the weight lost on the Diet Center Program is fat, not water or lean body mass (muscle). To address this practice, the proposed order (Parts I.H. and I.I.) prohibits Diet Center from: (1) Representing that participants on its LCD program will lose fat and no lean body mass; and (2) making any representation about the loss of fat or the loss of lean body tissue that participants on its LCD program will experience unless proposed respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

Monitoring Practices

According to the complaint, Diet Center provides its customers with diet protocols that require the customers to come in to one of proposed respondent's franchises regularly for monitoring of their progress, including weighing in. In the course of regularly ascertaining weight loss progress, Diet Center franchises, in some instances, are presented with weight loss results indicating that customers may not be consuming all of the food prescribed by their diet protocol. According to the complaint, such conduct could, if continued, impact their health. In light of this monitoring practice, the Commission's complaint alleges that Diet Center franchises have failed to disclose to consumers who are losing weight at a rate faster than called for under the diet protocol that failing to follow the diet protocol and consume all of the food prescribed could impact their health.

The proposed consent order seeks to address the alleged monitoring misrepresentation cited in the accompanying complaint in two ways. First, the order (Part I.G.) requires Diet Center to disclose in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications. Second, the proposed order (part I.K.) generally prohibits any misrepresentation concerning the safety of any weight loss program.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

Statement of Commissioner Deborah K. Owen Concurring in Part and Dissenting in Part

Statement of Commissioner Deborah K. Owen concurring in part and dissenting in part in Diet Center, Inc., File No. 902-3178, Jenny Craig Inc., File No. 902-3188, Nutri/System, Inc., File No. 902-3159, Physicians Weight Loss Centers of America, Inc., File No. 902-3185, and Weight Watchers International, Inc., File No. 902-3195.

The Commission's decision to accept for public comment consent orders with three major marketers of low calorie diets, and to issue Part III complaints against two others, represents an important, and largely appropriate, next step in the Commission's efforts to address allegations of false and unsubstantiated advertising claims in the diet industry. However, I must dissent on two aspects of the proposed remedies in these matters.

First, in the earlier very low calorie diet cases, I took the position that the mandated weight loss maintenance disclosures were likely to be too complex to enlighten consumers if made during short radio or TV ads.[1] I recommended requiring more concise disclosures for such broadcast ads, which would be supplemented by full disclosure at the point of sale. The contemplated relief in the present five matters adopts much of this approach, and, as such, represents a significant improvement over the very low calorie diet consents. However, this improvement would not apply where a broadcast maintenance claim includes a number, percentage, or other descriptive term

[1] See Statement Concurring in Part and Dissenting in Part in Jason Pharmaceuticals, Inc., File No. 912-3337, National Center for Nutrition, Inc., File No. 912-3024, and Sandoz Nutrition Corporation, File No. 912-3023 (Aug. 10, 1992).

to convey a quantitative measure. I am concerned that this proviso will significantly reduce, if not eliminate, the incidence of shorter, more understandable broadcast ad disclosures, without providing sufficiently compensating gains in preventing deception. Furthermore, the proviso's language regarding descriptive terms conveying a quantitative measure is vague. Appropriate, non-deceptive claims may be inadvertently chilled as a result, and vexing compliance questions may arise as respondents attempt to conform to the requirements of the orders. Accordingly, I dissent with respect to inclusion of this proviso in the proposed consents and notice orders.

Second, I dissent with regard to the notice of possible action under section 19(b) of the Federal Trade Commission Act, 15 U.S.C. 57b, in the Jenny Craig and Weight Watchers matters. Consumer redress has not been included in any of the recent settlements with marketers of very low, and low calorie diet programs, and there appear to be no distinguishable appropriate grounds for seeking this relief from Jenny Craig and Weight Watchers. Moreover, assessing consumer injury and determining levels of fair and equitable redress are apt to pose insurmountable problems for meaningful section 19(b) actions in these matters.

[FR Doc. 93–24868 Filed 10–8–93; 8:45 am]
BILLING CODE 6750–01–M

[File No. 931–0067]

The Keds Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Massachusetts-based manufacturer and seller of athletic and casual shoes from fixing the resale price at which any dealer may advertise or sell any Keds athletic or casual footwear item; coercing or pressuring any dealer to adopt or adhere to any resale price; attempting to secure commitments from any dealer about the resale price at which it will advertise or sell any such product; and requiring or suggesting that dealers report other dealers who advertise or sell any such product below any resale price.

DATES: Comments must be received on or before December 13, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC. 20580.

FOR FURTHER INFORMATION CONTACT: Mark Whitener or Joan Greenbaum, FTC/H–374, Washington, DC. 20508. (202) 326–2845 or 326–2629. Michael Bloom or Rhonda McLean, New York Regional Office, Federal Trade Commission, 150 William St., suite 1300, New York, N.Y. 10038. (212) 264–1207.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 39 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

Commissioners: Janet D. Steiger, Chairman, Mary L. Azcuenaga, Deborah K. Owen, Roscoe B. Starek III, Dennis A. Yao.

The Federal Trade Commission having initiated an investigation of certain acts and practices of The Keds Corporation, a subsidiary of The Stride Rite Corporation, and it now appearing that The Keds Corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from engaging in the acts and practices being investigated,

It is hereby agreed by and between The Keds Corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent The Keds Corporation, a wholly-owned subsidiary of The Stride-Rite Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts. The mailing address and principal place of business of proposed respondent is: Five Cambridge Center, Cambridge, Massachusetts 02142.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. The proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order

contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered, That for the purpose of this order, the following definitions shall apply:

(A) "Keds" or "respondent" means The Keds Corporation, its predecessors, subsidiaries, divisions, groups, and affiliates controlled by The Keds Corporation, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(B) "Product" means any athletic or casual footwear items which are manufactured, offered for sale or sold by respondent to dealers.

(C) "Dealer" means any person, corporation or entity not owned by The Keds Corporation or by any entity owned or controlled by Keds that in the course of its business sells any product.

(D) "Resale Price" means any price, price floor, minimum price, maximum discount, price range, or any mark-up formula or margin of profit used by any dealer for pricing any product. "Resale price" includes, but is not limited to, any suggested, established, or customary resale price.

II

It is further ordered, That Keds, directly or indirectly, or through any corporation, subsidiary, division or other device, in connection with the manufacturing, offering for sale, sale or distribution of any product in or affecting "commerce," as defined by the Federal Trade Commission Act, do forthwith cease and desist from:

(A) Fixing, controlling, or maintaining, directly or indirectly, the resale price at which any dealer may advertise, promote, offer for sale or sell any product.

(B) Requiring, coercing, or otherwise pressuring any dealer, directly or indirectly, to maintain, adopt, or adhere to any resale price.

(C) Securing or attempting to secure, directly or indirectly, any commitment or assurance from any dealer concerning the resale price at which the dealer may advertise, promote, offer for sale or sell any product.

(D) Requiring, requesting or suggesting, directly or indirectly, that any dealer report the identity of other dealers who advertise, promote, offer for sale or sell any product below any resale price.

III

It is further ordered, That, for a period of five (5) years from the date on which this order becomes final, Keds shall clearly and conspicuously state the following on any list, advertising, book, catalogue, or promotional material where it has suggested any resale price to any dealer:

Although the Keds corporation may suggest resale prices for products, retailers are free to determine on their own the prices at which they will advertise and sell keds products.

IV

It is further ordered, That, within thirty (30) days after the date on which this order becomes final, Keds shall mail by first class mail either the letter attached as Exhibit A or the letter attached as Exhibit B, together with copy of this order, to all to Keds' directors, officers, dealers, distributors, agents, or sales representatives.

V

It is further ordered, That, for a period of two (2) years after the date on which this order becomes final, Keds shall mail by first class mail either the letter attached as Exhibit A or the letter attached as Exhibit B, together with a copy of this order, to all new directors, officers, dealers, distributors, agents, or sales representatives of Keds, within ninety (90) days of the commencement of such person's employment or affiliation with Keds.

VI

It is further ordered, That Keds shall notify the Commission at least thirty (30) days prior to any proposed changes in Keds such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

VII

It is further ordered, That, within sixty (60) days after this order becomes final, and at such other times as the Commission or its staff shall request, Keds shall file with the Commission a verified written report setting forth in detail the manner and form in which Keds has complied and is complying with this order.

Exhibit A

[KEDS LETTERHEAD]

Dear Retailer: The Federal Trade Commission has conducted an investigation into Keds' sales policies, and in particular, Keds' Suggested Retail Pricing Policy that was announced in May 1992. As you know, on June 25, 1993, Keds withdrew its Pricing Policy. Keds has always believed, and continues to believe, that its Pricing Policy did not violate the law. However, to expeditiously resolve the investigation and to avoid disruption to the conduct of its business, Keds has agreed, without admitting any violation of the law, to the entry of a Consent Order by the Federal Trade Commission prohibiting certain practices relating to resale prices. A copy of the Order is enclosed. This letter and the accompanying Order are being sent to all of our dealers, sales personnel and representatives.

The Order spells out our obligations in greater detail, but we want you to know and understand the following:

1. You can sell and advertise our products at any price you choose.

2. While we may send materials to you which may contain our suggested retail prices, you are completely free to disregard these suggestions.

We look forward to continuing to do business with you in the future.

Sincerely yours,

President,

The Keds Corporation.

Exhibit B

[KEDS LETTERHEAD]

Dear Retailer: The [name of state] Attorney General's Office, along with the offices of the Attorneys General in the other 49 states, and the Federal Trade Commission have conducted investigations into Keds' sales policies, and in particular, Keds' Suggested Retail Pricing Policy that was announced in May 1992. As you know, on June 25, 1993, Keds withdrew its Pricing Policy. Keds has always believed, and continues to believe, that its Pricing Policy did not violate the law. However, to expeditiously resolve the investigations and to avoid disruption to the conduct of its business, Keds has agreed, without admitting any violation of the law, to the entry of Final Judgments and Consent Decrees by the State of [name of state] and the Federal Trade Commission prohibiting certain practices relating to resale prices. Copies of the Final Judgments and Consent Decrees are attached. This letter and the accompanying documents have been sent to all of our dealers, sales personnel and representatives.

The Final Judgments and Consent Decree spell out our obligations in greater detail, but we want you to know and understand the following. Under both orders:

1. You can advertise and sell our products at any price you choose.

2. While we may send materials to you which may contain our suggested retail prices, you are completely free to disregard these suggestions.

In addition, the [name of state] order requires that:

3. Keds will not take any adverse action against you because of the price at which you advertise or sell our products.

We look forward to continuing to do business with you in the future.

Sincerely yours,

President,

The Keds Corporation.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from The Keds Corporation, a wholly-owned subsidiary of Stride Rite Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that The Keds Corporation ("Keds") has entered into a combination, agreement, and understanding with certain of its dealers to maintain the resale prices at which certain of its dealers sell certain of its athletic or casual footwear products. The complaint alleges that this conduct violates section 5 of the Federal Trade Commission Act.

Keds has signed a consent agreement that prohibits it from fixing, controlling, or maintaining the resale prices at which any dealer may advertise, promote, offer for sale, or sell any Keds product. The proposed order prohibits Keds from coercing or pressuring any dealer to maintain, adopt, or adhere to any resale price, and from securing or attempting to secure commitments or assurances from any dealer concerning the resale price at which the dealer may advertise, promote, offer for sale, or sell any Keds product. The proposed order does not prohibit the use of price-restrictive cooperative advertising programs if they are not part of an attempt by Keds to maintain resale prices. See U.S. Pioneer Electronic Corp., Docket No. C–2755, 9–13 (April 8, 1992) (order granting in part and denying in part request to reopen and modify order issued October 24, 1975, and order to show cause). The proposed consent order also prohibits Keds from requiring, requesting, or suggesting that its dealers report dealers who sell any Keds product below any resale price suggested or established by Keds.

The proposed order requires The Keds Corporation to mail a letter to its dealers which will inform them that they can sell and advertise Keds products at any price they choose. The proposed order also requires Keds, for a period of five years, to place on any material in which it suggest resale prices a statement that the dealer is free to determine the prices at which it will sell Keds products.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 93–24866 Filed 10–8–93; 8:45 am]

BILLING CODE 6750–01–M

[File No. 902–3159]

Nutri/System, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Blue Bell, Pennsylvania diet program company from misrepresenting the performance or safety of any weight-loss program it offers in the future; require it to have competent and reliable scientific evidence to back up future claims it makes about weight loss and maintenance; require it to include, in conjunction with maintenance success claims, the statement "For many dieters, weight loss is temporary;" require it to disclose to its customers that failure to eat all of the food recommended in the program may put their health at risk; require it to disclose, if it makes price representations, either all mandatory fees or a list of the additional products or services consumers will need to purchase; and require it to disclose all material connections between its program and any entity that endorses or evaluates it.

DATES: Comments must be received on or before December 13, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Daynard, Federal Trade Commission, 6th St. and Pa. Ave., NW., Washington DC, 20580, (202) 326–3291.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Nutri/System, Inc., a corporation, and it now appearing that Nutri/System, Inc., a corporation, hereafter sometimes referred to as proposed respondent or respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed, by and between Nutri/System, Inc., by its duly authorized officers, and its attorneys, and counsel for the Federal Trade Commission that:

1. Respondent Nutri/System, Inc., is a Pennsylvania corporation, with its offices and principal place of business at 380 Sentry Parkway, Blue Bell, Pennsylvania 19422.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this

agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following Order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the attached draft complaint and the following Order. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. "Competent and reliable scientific evidence" shall mean those tests, analyses, research, studies, surveys, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession or science to yield accurate and reliable results;

B. "Weight loss program" shall mean any program designed to aid consumers in weight loss or weight maintenance;

C. "Material connection" shall mean any relationship between the respondent and a third party, which relationship might materially affect the weight or credibility of any endorsement, evaluation or test and which relationship would not reasonably be expected by consumers;

D. "Broadcast medium" shall mean any radio or television broadcast, cablecast, home video, or theatrical release.

E. For any order-required disclosure in a print medium to be made "clearly and prominently", or in a "clear and prominent" manner, it must be given both in the same type style and in: (1) Twelve point type where the representation that triggers the disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type. For any order-required disclosure given orally in a broadcast medium to be made "clearly and prominently", or in a "clear and prominent" manner, the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure.

F. "Short broadcast advertisement" shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

I

It is ordered, That respondent Nutri/System, Inc., a corporation, its successors and assigns, and respondent's officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants on any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation; *Provided, further,* That for any representation that:

(1) Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants of respondent's program, said evidence shall, at a minimum, be based on a representative sample of:

(a) All participants who have entered the program, where the representation relates to such persons; *Provided, however,* That the required sample may exclude those participants who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(b) All participants who have completed a particular phase of the program or the entire program, where the representation *only* relates to such persons;

(2) Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two years from their completion of the active maintenance phase of respondent's program or earlier termination, as applicable; and

(3) Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

(a) Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent, or

(b) Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary."; *Provided, further,* That respondent shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondent's weight loss program; *Provided, however,* That a mere statement about the existence, design, or content of a maintenance program shall not, without more, be

considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondent discloses, clearly and prominently, and in close proximity to such representation, the following information:

(1) The average percentage of weight loss maintained by those participants;

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program; *Provided, further,* That if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

(3) If the participant population referred to is not representative of the general participant population for respondent's programs:

(a) The proportion of the total participant population in respondent's programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

(b) The statement: "Nutri/System makes no claim that this [these] result[s] is [are] representative of all participants in the Nutri/System program."

Provided, further, That compliance with the obligations of this paragraph I.C. in no way relieves respondent of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondent:

(1) Includes, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our centers for details about our maintenance record.";

(2) For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, complies with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondent:

(a) Give to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C.(1)–(3) of this Order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 pt. bold), lead-in (Times Roman 12 pt.), disclosures (Helvetica 14 pt. bold), acknowledgment language (Times Roman 12 pt.) and signature block therein; *Provided, further,* That no information in addition to that required to be included in the document required by this subparagraph I.D.(2) shall be included therein:

Maintenance Information

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here _____]

For many dieters, weight loss is temporary.

I have read this notice.

_____

(Client Signature)

_____

(Date)

(b) Requires each potential client to sign such document; and

(c) Gives each client a copy of such document; and

Provided, however, That if any potential participant who does not then participate in the program refuses to sign or accept a copy of such document, respondent shall so indicate on such document and shall not, for that reason alone, be found in breach of this subparagraph I.D.(2); and

(3) Retains in each client file a copy of the signed maintenance notice required by this paragraph;

Provided, further, that: (1) Compliance with the obligations of this paragraph I.D. in no way relieves respondent of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss; and (2) respondent must comply with both paragraph I.D. and paragraph I.C. of this Order if respondent includes in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term";

Provided, however, That the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants of respondent's weight loss program if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants of respondent's weight loss programs generally achieve, unless respondent discloses, clearly and prominently, and in close proximity to the endorser's statement of his or her weight loss success or weight loss maintenance success:

(1) What the generally expected success would be for Nutri/System customers in losing weight or maintaining achieved weight loss; *Provided, however,* That in determining the generally expected success for Nutri/System customers, respondent may exclude those customers who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy, or change of residence; or

(2) One of the following statements:

(a) "You should not expect to experience these results."

(b) "This result is not typical. You may not do as well."

(c) "This result is not typical. You may be less successful."

(d) "_____'s success is not typical. You may not do as well."

(e) "_____'s experience is not typical. You may achieve less."

(f) "Results not typical."

(g) "Results not typical of program participants."

Provided, further, That if endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner and in immediate conjunction with the representation that triggers the disclosure.

Provided, however, That:

(1) For endorsements or testimonials about weight loss success, respondent can satisfy the requirements of subparagraph I.E.(1) by accurately disclosing the generally expected success in the following phrase: "Nutri/System clients lose an average of _____pounds over an average ____ week treatment period"; and

(2) If the weight loss success or weight loss maintenance success depicted in the advertisement is representative of

what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraph I.E. (1) or (2) herein, respondent may substitute a clear and prominent disclosure of the percentage of all of respondent's customers that the group or subset defined in the advertisement represents.

F. Representing, directly or by implication, that the price at which any weight loss program can be purchased is the only cost associated with losing weight on that program, unless such is the case.

G. Representing, directly or by implication, the price at which any weight loss program can be purchased, unless respondent discloses, clearly and prominently, either:

(1) In close proximity to such representation, the existence and amount of all mandatory costs or fees associated with the program offered; or

(2) In immediate conjunction with such representation, one of the following statements:

(a) "Plus the cost of [list of products or services that participants must purchase at additional cost]."

(b) "Purchase of [list of products or services that participants must purchase at additional cost] required.";

Provided, further, That in broadcast media, if the representation that triggers any disclosure required by this paragraph is oral, the required disclosure must also be made orally.

H. Failing to disclose over the telephone, for a period of time beginning with the date of any advertisement of the price at which any weight loss program can be purchased and ending no sooner than 180 days after the last dissemination of any such advertisement, to consumers who inquire about the cost of any weight loss program, or are told about the cost of any weight loss program, the existence and amount of any mandatory costs or fees associated with participation in the program; *Provided, however,* That respondent may satisfy this requirement by directing its weight loss centers to disclose the information, by providing the center personnel with suggested language to be used when responding to phone inquiries and by making its best efforts to ensure compliance with its directive to disclose price information over the telephone.

I. Representing, directly or by implication, that prospective participants in respondent's weight loss program will reach a specified weight within a specified time period, unless at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

J. Making comparisons between the efficacy of respondent's weight loss program and the efficacy of any other weight loss and/or diet program(s), unless at the time of making such representation, respondent possesses and relies upon a competent and reliable scientific study or survey substantiating the representation.

K. Representing, directly or by implication, that any of respondent's employees or any of the employees of any of respondent's franchisees, has been certified or trained as a specialist in nutrition or nutrition science unless respondent has determined through some objective means that the employee is in fact competent in that particular field or discipline, or otherwise misrepresenting the competence, skill, training, credentials or expertise of any of respondent's employees or any of the employees of respondent's franchisees.

L. Failing to disclose, clearly and prominently, in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications.

M. Representing, directly or by implication, that any weight loss program is endorsed by, complies with, or meets standards or guidelines for weight loss established by any professional or governmental organization or association, unless such is the case.

N. Making any representation, directly or by implication, that any organization, institution or publication has conducted or collaborated in, or endorsed the results of, any evaluation, survey, study, or report concerning any diet program unless such is the case.

O. Failing to disclose, clearly and prominently, the nature of any material connection, where one exists, between an endorser, evaluator, or tester of any diet program and the respondent, or otherwise misrepresenting the nature of any material relationship between respondent and any third party endorser, evaluator or tester.

P. Misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

Q. Misrepresenting, directly or by implication, the performance, efficacy, or safety of any weight loss program.

II

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this Order.

III

It is further ordered, That respondent shall maintain for a period of three (3) years after the date the representation was last made and upon request make available to the Federal Trade Commission staff for inspection and copying, all materials possessed and relied upon to substantiate any representation covered by this Order, and all test reports, studies, surveys or other information in its possession or control that contradict, qualify or call into question any such representation.

IV

It is further ordered, That respondent shall distribute a copy of this Order to each of its officers, agents, representatives, independent contractors and employees who is involved in the preparation and placement of advertisements or promotional materials or who has any responsibilities with respect to the subject matter of this Order; and, for a period of five (5) years from the date of entry of this Order, distribute same to all future such officers, agents, representatives, independent contractors and employees.

V

It is further ordered, That:

A. Respondent shall distribute a copy of this Order to each of its franchisees and licensees and shall contractually bind them to comply with the prohibitions and affirmative requirements of this Order; respondent may satisfy this contractual requirement by incorporating such Order requirements into its current Operations Manual; and

B. Respondent shall further make reasonable efforts to monitor its franchisees' and licensees' compliance with the Order provisions; respondent may satisfy this requirement by: (1) Taking reasonable steps to notify promptly any franchisee or licensee that respondent determines is failing materially or repeatedly to comply with any order provision; (2) providing the Federal Trade Commission with the name and address of the franchisee or licensee and the nature of the noncompliance if the franchisee or

licensee fails to comply promptly with the relevant Order provision after being so notified; and (3) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, diligently pursuing reasonable and appropriate remedies available under its franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee.

VI

It is further ordered, That respondent shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Nutri/System, Inc., (hereinafter "N/S"), marketer of the Nutri/System low-calorie diet (hereinafter "LCD") program. The N/S diet program is offered to the public nationwide through company-owned and franchished clinics.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondent deceptively advertised: (1) Its LCD program's success in helping customers achieve and maintain weight loss; (2) the time frame within which consumers will achieve their desired weight loss goal; (3) the effectiveness of the N/S program in comparsion to other weight loss programs; (4) the purchase price of the N/S program; (5) the independence of a magazine endorsement of the N/S program; (6) the N/S program's compliance with guidelines for weight loss established by the American Medical Association, the American Heart Association and the American Dietetic Association; and (7) the qualifications and expertise of its staff. The complaint further alleges that N/S engaged in the deceptive practice of failing to warn clients it monitors of the health importance of following the diet protocol.

Success

The complaint against N/S alleges that the company failed to possess a reasonable basis for claims it made regarding the success of its customers in losing weight and avoiding the regain of weight lost during the program. Through consumer testimonials and other advertisements, N/S represented that its customers typically are successful in reaching their weight loss goals and in maintaining their weight loss achieved under the N/S diet program either long-term or permanently.

The Commission believes that these success claims for customer weight loss and maintenance of achieved weight loss are deceptive because at the time it made the claims N/S did not possess adequate substantiation for those claims.

The proposed consent order seeks to address the alleged success misrepresentations cited in the accompanying complaint in several ways. First, the order (Part I.A.) requires the company to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the success of participants on any diet program in achieving or maintaining weight loss. To ensure compliance, the order further specifies what this level of evidence shall consist of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all participants using the program or any subset of those participants, that evidence shall be based on a representative sample of: (a) All participants who have entered the program, where the representation relates to such persons; or (b) all participants who have completed a particular phase of the program or the entire program, where the representation *only* relates to such persons.

(2) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the experience of participants who were followed for a period of at least two years after their completion of the respondent's program, including any periods of participation in respondent's maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall be based upon the experience of participants who were followed for a period of time after completing the program that is either: (a) Generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent; or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

Second, as measures to ensure future compliance, the proposed order requires the proposed respondent for any claim that participants of any diet program have successfully maintained weight loss to disclose the fact that "For many dieters, weight loss is temporary" (Part I.B.), as well as the following information relating to that claim (Part I.C.):

(1) The average percentage of weight loss maintained by those participants (*e.g.*, "60% of achieved weight loss was maintained"),

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, and the fact that all or a portion of the time period covered includes participation in proposed respondent's maintenance program(s) that follows active weight loss, if that is the case—*e.g.*, "participants maintain an average of 60% of weight loss 22 months after active weight loss (includes 18 months on maintenance program)", and

(3) Where the participant population referred to is not representative of the general participant population for that program, the proportion of the total participant population that those participants represent, expressed in terms of a percentage or actual numbers of participants—e.g. "Participants on maintenance—30% of our clients—kept off an average of 66% of the weight for one year (includes time on maintenance program)" or, in lieu of that factual disclosure, the statement: "N/S makes no claim that this result is representative of all participants in the N/S program."

Third, for maintenance success claims made in broadcast advertisements of thirty seconds or less duration, the proposed order (Part I.D.) requires that N/S, in lieu of making the factual disclosures required for such claims by Part I.C: (1) Include in such advertisements the statement "Check at our centers for details about our maintenance record."; and (2) provide consumers at point-of-sale with a required form that includes the factual disclosures required by Part I.C, which form must be signed by the client and retained in the company's client file.

The proposed order makes clear that this alternative disclosure requirement does not relieve N/S of the obligation to substantiate any maintenance success

claim, in accordance with Part I.A. of the order, and it "takes back" the exception from full quantitative disclosures in short broadcast advertising if N/S makes a maintenance success claim that uses numbers or descriptive terms that convey a quantitative measure, such as "most of our customers maintain their weight loss long term." N/S in that case would have to make all the required disclosures in the ad and provide the disclosures at point-of-sale.

Fourth, for weight-loss and weight-loss maintenance success claims made through endorsements or testimonials that are not representative of what N/S diet program participants generally achieve, the order (Part I.E.) requires that N/S disclose either what the generally expected success would be for N/S customers, or one of several alternative statements, such as "This result is not typical. You may be less successful", which explains the limited applicability of atypical testimonials in accordance with the Commission's "Guides Concerning Use of Endorsements and Testimonials in Advertising" 16 CFR 255.2(a). Under the proposed order, N/S may satisfy the requirements of the first disclosure concerning generally expected success by accurately disclosing those facts in the following format: "Nutri/System clients lose an average of ____pounds over an average ____-week treatment period."

Finally, the proposed order (Part I.Q.) generally prohibits the company from misrepresenting the performance or efficacy of any weight loss program.

Projection of Weight Loss

The Commission's complaint further alleges that N/S failed to possess a reasonable basis for its claim made during initial sales presentations that consumers will typically reach their desired weight-loss goal within the time frame set by the company's computer program. To address this practice, the proposed order (Part I.I.) prohibits N/S from representing that prospective participants will reach a specified weight within a specified period of time, unless proposed respondent possesses and relies upon competent and reliable scientific evidence substantiating the representation.

Comparative Weight Loss

The Commission's complaint further alleges that N/S falsely claimed that competent and reliable studies or surveys show that its customers lose at least 29% more weight than dieters on other weight loss programs. The proposed order seeks to address this practice in two ways. First, Part I.J. requires the company to have a competent and reliable scientific study or survey substantiating any claim that compares the efficacy of its weight loss program with that of any other weight loss or diet program. Second, Part I.P. of the proposed order prohibits the company from misrepresenting any facts about, or interpretations of, any test or study.

Price

The Commission's complaint against N/S also alleges that the company falsely represented that the price it advertised for its diet program is the only cost associated with losing weight on the diet program, when, in fact, there are substantial additional mandatory expenses that far exceed the advertised price. The complaint further alleges that N/S failed to disclose adequately to consumers the existence and amount of all mandatory expenses associated with participation in the diet program.

The proposed consent order seeks to address these practices in three ways. First, Part I.F. of the proposed order prohibits untrue representations that an advertised price for a weight loss program is the only cost associated with losing weight on that program. Second, for any advertisement containing a price at which any weight loss program can be purchased, the proposed order (Part I.G.) requires N/S to disclose either the existence and amount of all mandatory costs or fees associated with the program offered or a statement identifying a list of all products or services that participants must purchase at an additional cost. This disclosure must be made orally under the proposed order if the price representation is made orally in broadcast media.

Finally, the proposed order (Part I.H.) requires the proposed respondent to disclose over the telephone to callers who inquire or are told about the cost of any weight loss program, the existence and amount of any mandatory costs or fees associated with participation in the program. Under the order, N/S can satisfy this requirement by: (1) Directing its weight loss centers to disclose the information; (2) providing the center personnel with suggested language to be used when responding to phone inquiries; and (3) making its best efforts to ensure compliance with its directive to disclose price information over the telephone.

Independence of Magazine Endorsement

The Commission's complaint further alleges that N/S falsely claimed that an evaluation and rating of various diet programs appearing in a magazine were conducted or written in collaboration with, and the results approved by, a major university, and that the company had no material connection with the publication of the magazine rating. The complaint further alleges that N/S failed to disclose that, prior to publication of the magazine article, it paid a sponsorship fee to the magazine for promotion and distribution of the magazine, and received and exercised a right of prior review of the article rating the diet programs.

The proposed consent order seeks to address these practices in three ways, First, Part I.N. prohibits untrue claims that any entity has conducted, collaborated in, or endorsed the results of, any evaluation concerning any diet program. Second, Part I.O. of the proposed order requires N/S to disclose the nature of any material connection, where one exists, between an endorser, evaluator or tester of any diet program and the proposed respondent. Finally, the proposed order (Part I.O.) generally prohibits the company from misrepresenting the nature of any material relationship between the proposed respondent and any third party endorser, evaluator or tester.

Guidelines for Weight Loss Programs

The Commission's complaint also alleges that N/S falsely claimed that its diet program complies with all of the specific elements of a comprehensive weight loss program issued by the American Medical Association, the American Heart Association and the American Dietetic Association. The proposed consent order (Part I.M.) prohibits untrue representations that N/S's diet program is endorsed by, complies with, or meets standards or guidelines for weight loss established by any professional or governmental entity.

Certified Nutritional Specialists

The Commission's complaint further alleges that N/S claimed, through the use of badges identifying certain employees as "Certified Nutritional Specialists, and other representations, that its "Nutritional Specialists" have been certified as specialists in nutrition through an objective determination of their competence in the field of nutrition, when, in fact, they have not. The complaint further alleges that the "certification" procedure used by the proposed respondent fails to test or evaluate the N/S "Nutritional Specialist's" competence in applying the basic principles of nutrition.

To address this practice, the proposed consent order (Part I.K.) prohibits the company from misrepresenting the

qualifications or expertise of any of its employees or those of its franchisees, and bars claims that any such employee is certified or trained as a specialist in nutrition or nutritional science unless proposed respondent has determined through some objective means that the employee is in fact competent in that particular field or discipline.

Monitoring Practices

According to the complaint, N/S provides its customers with diet protocols that require the customers to come in to one of proposed respondent's centers once a week for monitoring of their progress, including weighing in. In the course of regularly ascertaining weight loss progress, respondent, in some instances, is presented with weight loss results indicating that customers are losing weight significantly in excess of their projected goals, which is an indication that they may not be consuming all of the food prescribed by their diet protocol. According to the complaint, such conduct could, if not corrected promptly, result in health complications. In light of this monitoring practice, the Commission's complaint alleges that N/S has failed to disclose to consumers who are losing weight significantly in excess of their projected goals that failing to follow the diet protocol and consume all of the food prescribed could result in health complications.

The proposed consent order seeks to address the alleged monitoring misrepresentation cited in the accompanying complaint in two ways. First, the order (Part I.L.) requires N/S to disclose in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications. Second, the proposed order (Part I.Q.) generally prohibits any misrepresentation concerning the safety of any weight loss program.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

Statement of Commission Deborah K. Owen Concurring in Part and Dissenting in Part

Statement of Commissioner Deborah K. Owen concurring in part and dissenting in part in Diet Center, Inc., File No. 902–3178, Jenny Craig Inc., File No. 902–3188, Nutri/System, Inc., File No. 902–3159, Physicians Weight Loss Centers of America, Inc., File No. 902–3185, and Weight Watchers International, Inc., File No. 902–3195.

The Commission's decision to accept for public comment consent orders with three major marketers of low calorie diets, and to issue Part III complaints against two others, represents an important, and largely appropriate, next step in the Commission's efforts to address allegations of false and unsubstantiated advertising claims in the diet industry. However, I must dissent on two aspects of the proposed remedies in these matters.

First, in the earlier very low calorie diet cases, I took the position that the mandated weight loss maintenance disclosures were likely to be too complex to enlighten consumers if made during short radio or TV ads.[1] I recommended requiring more concise disclosures for such broadcast ads, which would be supplemented by full disclosure at the point of sale. The contemplated relief in the present five matters adopts much of this approach, and, as such, represents a significant improvement over the very low calorie diet consents. However, this improvement would not apply where a broadcast maintenance claim includes a number, percentage, or other descriptive term to convey a quantitative measure. I am concerned that this proviso will significantly reduce, if not eliminate, the incidence of shorter, more understandable broadcast ad disclosures, without providing sufficiently compensating gains in preventing deception. Furthermore, the proviso's language regarding descriptive terms conveying a quantitative measure is vague. Appropriate, non-deceptive claims may be inadvertently chilled as a result, and vexing compliance questions may arise as respondents attempt to conform to the requirements of the orders. Accordingly, I dissent with respect to inclusion of this proviso in the proposed consents and notice orders.

Second, I dissent with regard to the notice of possible action under section 19(b) of the Federal Trade Commission Act, 15 U.S.C. 57b, in the Jenny Craig and Weight Watchers matters. Consumer redress has not been included in any of the recent settlements with marketers of very low, and low calorie diet programs, and there appear to be no distinguishable appropriate grounds for seeking this relief from Jenny Craig and Weight Watchers. Moreover, assessing consumer injury and determining levels of fair and equitable redress are apt to pose insurmountable problems from meaningful section 19(b) actions in these matters.

[FR Doc. 93–24867 Filed 10–8–93; 8:45 am]

BILLING CODE 6750–01–M

[1] See Statement Concurring in Part and Dissenting in Part in Jason Pharmaceuticals, Inc., File No. 902–3337, National Center for Nutrition, Inc., File No. 912–3024, and Sandoz Nutrition Corporation, File No. 912–3023 (Aug. 10, 1992).

[File No. 902 3185]

Physicians Weight Loss Centers of America, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Ohio diet-program companies from misrepresenting the performance or safety of any weight-loss program they offer in the future, and would require them to have scientific data to substantiate future claims they make regarding weight loss and maintenance. In addition, the consent agreement would require certain disclosures regarding safety and health risks.

DATES: Comments must be received on or before December 13, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Kelly, FTC/H–200, Washington, DC 20580. (202) 326–3304 or Michael Milgrom, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., suite 520–A, Cleveland, OH. 44114. (216) 522–4207.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission, having initiated an investigation of certain acts and practices of Physicians Weight Loss Centers of America, Inc. and Physicians Weight Loss Centers, Inc., ("Physicians Weight Loss Centers" or "respondents"), and it now appearing that proposed respondents are willing to

enter into an Agreement containing an Order to Cease and Desist from the acts and practices being investigated,

It is hereby agreed by and between Physicians Weight Loss Centers of America, Inc., and Physicians Weight Loss Centers, Inc., by their duly authorized officers and their attorney and counsel for the Federal Trade Commission that:

1. Proposed respondents Physicians Weight Loss Centers of America, Inc., and Physicians Weight Loss Centers, Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of Ohio. The principal place of business of both corporations is located at 395 Springside Drive, Akron, Ohio 44313.

2. Proposed respondents admit all the jurisdictional facts set forth in the attached draft Complaint.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

d. Any claim under the Equal Access to Justice Act, 5 U.S.C. § 504.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the attached draft Complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft Complaint here attached.

6. This Agreement contemplates that if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (a) issue its Complaint corresponding in form and substance with the attached draft Complaint and its decision containing the following Order to Cease and Desist in disposition of the proceeding, and (b) make information public in respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the Complaint and decision containing the agreed-to Order to proposed respondents' addresses as stated in this Agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order of the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondents have read the attached draft Complaint and the following Order. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definitions

For the purposes of this Order, the following definitions shall apply:

A. "Competent and reliable scientific evidence" shall mean those tests, analyses, research, studies, surveys, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession or science to yield accurate and reliable results.

B. "Weight loss program" shall mean any program designed to aid consumers in weight loss or weight maintenance.

C. "Very-low-calorie diet" or "VLCD" shall mean any dietary regimen that provides less than 800 calories per day.

D. "Low-calorie diet" or "LCD" mean any dietary regimen designed to cause weight loss that provides 800 calories or more per day.

E. "Broadcast medium" shall mean any radio or television broadcast, cablecast, home video, or theatrical release.

F. For any Order-required disclosure in a print medium to be made "clearly and prominently," or in a "clear and prominent" manner, it must be given both in the same type style and in: (1) Twelve point type where the representation that triggers the disclosure is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure where that representation is given in a type size that is smaller than twelve point type. For any Order-required disclosure given orally in a broadcast medium to be made "clearly and prominently,", or in a "clear and prominent" manner, the disclosure must be given at the same volume and in the same cadence as the representation that triggers the disclosure.

G. "Short broadcast advertisement" shall mean any advertisement of thirty seconds or less duration made in a broadcast medium.

H. "Affiliate" includes, but is not limited to, any corporation with a majority of shareholders or directors in common with either respondent.

It is ordered, That respondents Physicians Weight Loss Centers of America, Inc., a corporation, and Physicians Weight Loss Centers, Inc., a corporation, their successors, assigns and affiliates, their officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, including franchisees or licensees, in connection with the advertising, promotion, offering for sale, or sale of any weight loss program in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, about the success of participants in any weight loss program in achieving or maintaining weight loss or weight control unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation; *Provided, further,* That for any representation that:

1. Any weight loss achieved or maintained through the weight loss program is typical or representative of all or any subset of participants of respondents' program, said evidence shall, at a minimum, be based on a representative sample of:

a. All participants who have entered the program where the representation relates to such persons; *Provided, however,* That the required sample may exclude those customers who dropped out of the program within two weeks of their entrance or who did not complete

the program due to illness, pregnancy, or change of residence; or

b. All participants who have completed a particular phase of the program or the entire program, where the representation *only* relates to such persons;

2. Any weight loss is maintained long-term, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of at least two (2) years from their completion of the active maintenance phase of respondents' program, or earlier termination, as applicable; and

3. Any weight loss is maintained permanently, said evidence shall, at a minimum, be based upon the experience of participants who were followed for a period of time after completing the program that is either:

a. Generally recognized by experts in the field of treating obesity as being of sufficient length for predicting that weight loss will be permanent; or

b. Demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

B. Representing, directly or by implication, except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the statement: "For many dieters, weight loss is temporary."; *Provided, further,* That respondents shall not represent, directly or by implication, that the above-quoted statement does not apply to dieters in respondents' weight loss program; *Provided, however,* That a mere statement about the existence, design, or content of a maintenance program shall not, without more, be considered a representation that participants of any weight loss program have successfully maintained weight loss.

C. Representing, directly or by implication, except through short broadcast advertisements referred to in paragraph I.D. herein, and except through endorsements or testimonials referred to in paragraph I.E. herein, that participants of any weight loss program have successfully maintained weight loss, unless respondents disclose, clearly and prominently, and in close proximity to such representation, the following information:

1. The average percentage of weight loss maintained by those participants;

2. The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program; *Provided, further,* That if any portion of the time period covered includes participation in a maintenance program(s) that follows active weight loss, such fact must also be disclosed; and

3. If the participant population referred to is not representative of the general participant population for respondents' programs:

a. The proportion of the total participant population in respondents' programs that those participants represent, expressed in terms of a percentage or actual numbers of participants, or

b. The statement: "Physicians Weight Loss Centers makes no claim that this [these] result[s] is [are] representative of all participants in the Physicians Weight Loss Centers program."

Provided, further, That compliance with the obligations of this Paragraph I.C. in no way relieves respondents of the requirement under Paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss.

D. Representing, directly or by implication, in short broadcast advertisements, that participants of any weight loss program have successfully maintained weight loss, unless respondents:

1. Include, clearly and prominently, and in immediate conjunction with such representation, the statement: "Check at our centers for details about our maintenance record.";

2. For a period of time beginning with the date of the first broadcast of any such advertisement and ending no sooner than thirty days after the last broadcast of such advertisement, comply with the following procedures upon the first presentation of any form asking for information from a potential client, but in any event before such person has entered into any agreement with respondents:

a. Give to each potential client a separate document entitled "Maintenance Information," which shall include all the information required by paragraph I.B. and subparagraphs I.C. (1)–(3) of this Order and shall be formatted in the exact type size and style as the example form below, and shall include the heading (Helvetica 14 pt. bold), lead-in (Times Roman 12 pt.), disclosures (Helvetica 14 pt. bold), acknowledgment language (Times Roman 12 pt.), and signature block therein; *Provided, further,* That no information in addition to that required to be included in the document required by this subparagraph I.D. (2) shall be included therein:

Maintenance Information

You may have seen our recent ad about maintenance success. Here's some additional information about our maintenance record.

[Disclosure of maintenance statistics goes here

_____]

For many dieters, weight loss is temporary. I have read this notice.

_____

(Client Signature)

_____

(Date)

b. Require each potential client to sign such document; and

c. Give each client a copy of such document;

Provided, however, That if any potential participant who does not then participate in the program refuses to sign or accept a copy of such document, respondents shall so indicate on such document and shall not, for that reason alone, be found in breach of this subparagraph I.D. (2); and ,

3. Retain in each client file a copy of the signed maintenance notice required by this paragraph;

Provided further, That: (1) compliance with the obligations of this paragraph I.D. in no way relieves respondents of the requirement under paragraph I.A. of this Order to substantiate any representation about the success of participants on any weight loss program in maintaining weight loss; and (2) respondents must comply with both paragraph I.D. and paragraph I.C. of this Order if respondents include in any such short broadcast advertisement a representation about maintenance success that states a number or percentage, or uses descriptive terms that convey a quantitative measure such as "most of our customers maintain their weight loss long-term";

Provided, however, That the provisions of paragraph I.D. shall not apply to endorsements or testimonials referred to in paragraph I.E. herein.

E. Using any advertisement containing an endorsement or testimonial about weight loss success or weight loss maintenance success by a participant or participants on respondents' weight loss program if the weight loss success or weight loss maintenance success depicted in the advertisement is not representative of what participants on respondents' weight loss programs generally achieve, unless respondents disclose, clearly and prominently, and in close proximity to the endorser's statement of his or her

weight loss success or weight loss maintenance success:

1. what the generally expected success would be for Physicians Weight Loss Centers customers in losing weight or maintaining achieved weight loss; *Provided, however,* That in determining the generally expected success for Physicians Weight Loss Centers customers, respondents may exclude those customers who dropped out of the program within two weeks of their entrance or who were unable to complete the program due to illness, pregnancy, or change of residence; or

2. one of the following statements:

a. "You should not expect to experience these results."

b. "This result is not typical. You may not do as well."

c. "This result is not typical. You may be less successful."

d. "_____'s success is not typical. You may not do as well."

e. "_____'s experience is not typical. You may achieve less."

f. "Results are not typical."

g. "Results not typical of program participants."

Provided, further, That if endorsements or testimonials covered by this paragraph are made in a broadcast medium, any disclosure required by this paragraph must be communicated in a clear and prominent manner and in immediate conjunction with the representation that triggers the disclosure;

Provided, however, That:

(1) For endorsements or testimonials about weight loss success, respondents can satisfy the requirements of subparagraph I.E.(1) by accurately disclosing the generally expected success in the following phrase: "Physicians Weight Loss Centers clients lose an average of _____pounds over an average _____-week treatment period";

(2) If the weight loss success or weight maintenance success depicted in the advertisement is representative of what participants of a group or subset clearly defined in the advertisement generally achieve, then, in lieu of the disclosures required in either subparagraph I.E. (1) or (2) herein, respondents may substitute a clear and prominent disclosure of the percentage of all of respondents' customers that the group or subset defined in the advertisement represents; and

(3) A clearly defined claim about respondents' very-low-calorie diet program, or low-calorie diet program, shall not require a disclosure as to representativeness for all of respondents' programs, where the claim does not refer to all programs.

F. Representing, directly or by implication, that the price at which any weight loss program can be purchased is the only cost associated with losing weight on that program, unless such is the case.

G. Representing, directly or by implication, the price at which any weight loss program can be purchased, unless respondents disclose, clearly and prominently, either:

(1) In close proximity to such representation, the existence and amount of all mandatory costs or fees associated with the program offered; or

(2) In immediate conjunction with such representation, one of the following statements:

(a) "Plus the cost of [list of products or services that participants must purchase at additional cost]."

(b) "Purchase of [list of products or services that participants must purchase at additional cost] required.";

Provided, further, That in broadcast media, if the representation that triggers the disclosure is oral, the disclosures required by either (1) or (2) of this paragraph must also be made orally.

H. Failing to disclose over the telephone, for a period of time beginning with the date of any advertisement of the price at which any weight loss program can be purchased and ending no sooner than 180 days after the last dissemination of any such advertisement, to prospective participants who inquire about the cost of any weight loss program, or are told about the cost of any weight loss program, the existence and amount of any mandatory costs or fees associated with participation in the program;

Provided, however, That: (1) respondents may satisfy this requirement by directing their weight loss centers to disclose the information, by providing the center personnel with suggested language to be used when responding to phone inquiries and by making their best efforts to ensure compliance with their directive to disclose price information over the telephone; and (2) respondents may satisfy the disclosure of food costs in connection with such telephone inquiries by the disclosure of average approximate weekly costs.

I. Representing, directly or by implication, the average or typical rate or speed at which prospective participants in any weight loss program will lose weight, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

J. Representing, directly or by implication, that prospective participants on respondents' weight loss program will reach a specified weight within a specified time period, unless at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

K. For any LCD program, failing to disclose, clearly and prominently, either (1) to each participant who, after the first two weeks on the program, is experiencing average weight loss that exceeds two percent of said participant's initial body weight or three pounds, whichever is less, for at least two consecutive weeks, or (2) in writing to all participants when they enter the program, that failure to follow the diet instructions and consume the total caloric intake recommended may involve the risk of developing serious health complications.

L. For any VLCD program, making any representation, directly or by implication, regarding its safety, unless respondents disclose, clearly and prominently, and in close proximity to any such representation, that physician monitoring is required to minimize the potential for health risks.

M. Misrepresenting, directly or by implication, the extent to which any weight loss program is supervised or monitored by physicians or any other health care professional.

N. Misrepresenting, directly or by implication, the performance, efficacy, or safety of any weight loss program.

II

It is further ordered, That respondents Physicians Weight Loss Centers of America, Inc., and Physicians Weight Loss Centers, Inc., shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent(s) such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation(s) that may affect compliance obligations arising out of this Order.

III

It is further ordered, That respondents shall maintain for a period of three (3) years after the date the representation was last made and upon request make available to the Federal Trade Commission staff for inspection and copying, all materials possessed and relied upon to substantiate any representation covered by this Order,

and all test reports, studies, surveys or other information in their possession or control, including complaints from consumers, that contradict, qualify or call into question the representation.

IV

It is further ordered, That respondents Physicians Weight Loss Centers of America, Inc., and Physicians Weight Loss Centers, Inc., shall distribute a copy of this Order to each of their officers, agents, and to employees or other entities involved in the preparation and placement of advertisements or promotional materials, and, for a period of three (3) years from the date of entry of this Order, distribute the same to all of respondents' future such officers, agents, representatives, independent contractors and employees. It shall be sufficient compliance with this provision as to employees with point-of-sale contact with customers to distribute a document that is approved by the Commission or its designated staff and contains the substantive provisions of this Order.

V

It is further ordered, That:

A. Respondents shall distribute a copy of this Order to each of their franchisees and licensees and shall contractually bind them to comply with the prohibitions and affirmative requirements of this Order; respondents may satisfy this contractual requirement by incorporating such Order requirements into their current Operations Manual; and

B. Respondents shall further make reasonable efforts to monitor their franchisees' and licensees' compliance with the Order provisions; respondents may satisfy this requirement by: (1) Taking reasonable steps to notify promptly any franchisee or licensee that respondents determine is failing materially or repeatedly to comply with any order provision; (2) providing the Federal Trade Commission with the name and address of the franchisee or licensee and the nature of the noncompliance if the franchisee or licensee fails to comply promptly with the relevant Order provision after being so notified; and (3) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, diligently pursuing reasonable and appropriate remedies available under their franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee.

Provided, however, That respondents' compliance with this Part shall constitute an affirmative defense to any civil penalty action arising from an act or practice of one of respondents' franchisees or licensees that violates this Order where respondents: (a) Have not authorized, approved or ratified that conduct; (b) have reported that conduct promptly to the Federal Trade Commission under this Part; and (c) in cases where that franchisee's or licensee's conduct constitutes a material or repeated violation of the order, have diligently pursued reasonable and appropriate remedies available under the franchise or license agreement and applicable state law to bring about a cessation of that conduct by the franchisee or licensee.

It is further ordered, That respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Commission has accepted an agreement to a proposed consent order from Physicians Weight Loss Centers of America, Inc., and Physicians Weight Loss Centers Inc., (hereinafter referred to collectively as "PWLC"), marketers of the Physicians Weight Loss Centers low-calorie diet (hereinafter "lcd") and very-low-calorie diet (hereinafter "vlcd") programs. The PWLC diet programs are offered to the public throughout much of the United States through centers owned by Physicians Weight Loss Centers, Inc., and centers franchised by Physicians Weight Loss Centers of America, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents deceptively advertised: (1) Their diet programs' success in helping customers achieve and maintain weight loss; (2) the purchase price of the PWLC programs; (3) the rate at which customers will lose weight; (4) the time frame within which consumers will achieve their desired weight loss goal; (5) that customers are actively supervised by the center physicians throughout their diet program; and (6) the safety of its vlcd program. The complaint also alleges that PWLC engaged in the deceptive practice of failing to warn clients that it monitors on lcd programs of the health importance of following the diet protocol.

Success

The complaint against PWLC alleges that the company failed to possess a reasonable basis for claims it made regarding the success of its customers in losing weight and avoiding the regain of weight lost during the program. Thorugh consumer testimonials and other advertisements, PWLC represented that its customers typically are successful in reaching their weight loss goals and in maintaining their weight loss achieved under PWLC diet programs long-term.

The Commission believes that these success claims for customer weight loss and maintenance of achieved weight loss are deceptive because PWLC at the time it made the claims did not possess adequate substantiation for those claims.

The proposed consent order seeks to address the alleged success misrepresentations cited in the accompanying complaint in several ways. First, the order (Part I.A.) requires the company to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the success of participants on any diet program in achieving or maintaining weight loss. To ensure compliance, the order further specifies what this level of evidence shall consist of when certain types of success claims are made:

(1) In the case of claims that weight loss is typical or representative of all participants using the program or any subset of those participants, that evidence shall be based on a representative sample of: (a) All participants who have entered the program, where the representation relates to such persons; or (b) all participants who have completed a particular phase of the program or the entire program, where the representation *only* related to such persons.

(2) In the case of claims that any weight loss is maintained long-term, that evidence shall be based upon the experience of participants who were followed for a period of at least two years after their completion of the respondents' program, including any periods of participation in respondents' maintenance program.

(3) In the case of claims that weight loss is maintained permanently, that evidence shall be based upon the experience of participants who were followed for a period of time after completing the program that is either: (a) Generally recognized by experts in the field of treating obesity as being of sufficient length to constitute a reasonable basis for predicting that weight loss will be permanent; or (b) demonstrated by competent and reliable survey evidence as being of sufficient duration to permit such a prediction.

Second, as measured to ensure future compliance, the proposed order requires the proposed respondents for any claim that participants of any diet program have successfully maintained weight loss to disclose the fact that "For many dieters, weight loss is temporary" (Part I.B.), as well as the following information relating to that claim (Part I.C.):

(1) The average percentage of weight loss maintained by those participants (*e.g.*, "60% of achieved weight loss was maintained"),

(2) The duration over which the weight loss was maintained, measured from the date that participants ended the active weight loss phase of the program, and the fact that all or a portion of the time period covered includes participation in proposed respondents' maintenance program(s) that follows active weight loss, if that is the case—*e.g.*, "participants maintain an average of 60% of weight loss 22 months after active weight loss (includes 18 months on maintenance program)", and

(3) Where the participant population referred to is not representative of the general participant population for that program, the proportion of the total participant population that those participants represent, expressed in terms of a percentage or actual numbers of participants—e.g. "Participants on maintenance—30% of our customers—kept off an average of 66% of the weight for one year (includes time on maintenance program)" or, in lieu of that factual disclosure, the statement: "Physicians Weight Loss Centers makes no claim that this result is representative of all participants in the Physicians Weight Loss Centers program."

Third, for maintenance success claims made in broadcast advertisements of thirty seconds or less duration, the proposed order (Part I.D.) requires that PWLC, in lieu of making the factual disclosures required for such claims by Part I.C: (1) Include in such advertisements the statement "Check at our centers for details about our maintenance record."; and (2) provide consumers at point-of-sale with a required form that includes the factual disclosures required by Part I.C., which form must be signed by the client and retained in the company's client file. If any potential participant who does not then participate in the program refused to sign or accept a copy of such document, respondents shall so indicate on such document.

The proposed order makes clear that this alternative disclosure requirement does not relive PWLC of the obligation to substantiate any maintenance success claim, in accordance with Part I.A. of the order, and it "takes back" the exception from full quantitative disclosures in short broadcast advertising if PWLC makes a maintenance success claim that uses numbers or descriptive terms that convey a quantitative measure, such as "most of our customers maintain their weight loss long term." PWLC in that case would have to make all the required disclosures in the ad and provide the disclosures at point-of-sale.

Fourth, for weight-loss and weight-loss maintenance success claims made through endorsements or testimonials that are not representative of what PWLC diet program participants generally achieve, the order (Part I.E.) requires that PWLC disclose either what the generally expected success would be for PWLC customers, or one of several alternative statements, such as "This result is not typical. You may be less successful", which explains the limited applicability of atypical testimonials in accordance with the Commission's "Guides Concerning Use of Endorsements and Testimonials in Advertising" 16 CFR 255.2(a). Under the proposed order, PWLC may satisfy the requirements of the first disclosure concerning generally expected success by accurately disclosing those facts in the following format: "Physicians Weight Loss Centers clients lose an average of _____pounds over an average _____-week treatment period."

Finally, the proposed order (Part I.N.) generally prohibits the company from misrepresenting the performance or efficacy of any weight loss program.

Price

The Commission's complaint against PWLC also alleges that PWLC failed to disclose adequately to consumers the existence and amount of all mandatory expenses associated with participation in the diet program.

The proposed consent order seeks to address these practices in three ways. First, Part I.F. of the proposed order prohibits untrue representations that an advertised price for a weight loss program is the only cost associated with losing weight on that program. Second, for any advertisement containing a price at which any weight loss program can be purchased, the proposed order (Part I.G.) requires PWLC to disclose either the existence and amount of all mandatory costs or fees associated with the program offered or a statement identifying a list of all products or services that participants must purchase at an additional cost. This disclosure must be made orally under the proposed order if the price representation is made orally in broadcast media.

Finally, the proposed order (Part I.H.) requires the proposed respondents to disclose over the telephone to callers who inquire or are told about the cost of any weight loss program, the existence and amount of any mandatory costs or fees associated with participation in the program. Under the order, PWLC can satisfy this requirement by: (1) Directing its weight loss centers to disclose the information; (2) providing the center personnel with suggested language to be used when responding to phone inquiries; and (3) making its best efforts to ensure compliance with its directive to disclose price information over the telephone. Proposed respondent may satisfy the disclosure of food costs over the telephone by disclosing average approximate weekly costs.

Rate of Weight Loss

The Commission's complaint further alleges that PWLC failed to possess a reasonable basis for claims it made concerning the average rate of weight loss for participants in its lcd program. The proposed consent order addresses this practice (Part I.I.) by prohibiting PWLC from representing that participants in its programs will lose weight at an average or typical rate or speed, unless PWLC possesses and relies upon competent and reliable scientific evidence substantiating the representation.

Projection of Weight Loss

The Commission's complaint also alleges that PWLC failed to possess a reasonable basis for its claim made during initial sales presentations that consumers will typically reach their desired weight-loss goal within the time frame computed by PWLC personnel. To address this practice, the proposed order (Part I.J.) prohibits PWLC from representing that prospective participants will reach a specified weight within a specified period of time, unless proposed respondents

possess and rely upon competent and reliable scientific evidence substantiating the representation.

Physician Supervision

The Commission's complaint further alleges that PWLC falsely advertised that customers participating in its programs are actively supervised by the center physicians throughout the diet program. To address this practice, the proposed consent order (Part I.M.) prohibits the proposed respondents from misrepresenting the extent to which any weight loss program is supervised or monitored by physicians or any other health care professional.

Safety

The Commission's complaint against PWLC also alleges that PWLC has failed to disclose that physician supervision is required to minimize the potential for health risks on vlcd's. PWLC has deceptively advertised that its vlcd program is unqualifiedly free of health risks.

The complaint does not allege that the PWLC vlcd program is unsafe, but that proposed respondents' claim that the program is risk-free is deceptive in light of its failure to disclose that physician supervision is required to minimize the potential for health risks. There is some empirical evidence that, during the period in which they are dieting, patients on vlcd's may be at increased risk of developing gallstones.

The proposed consent order seeks to address the alleged safety misrepresentation cited in the accompanying complaint in two ways. First, the order (Part I.L.) requires PWLC to disclose in conjunction with any claim regarding the safety of any vlcd program that physician monitoring is required to minimize the potential for health risks. Thus, if proposed respondents in the future were to claim that PWLC's vlcd program is "safe," they would need to make the required disclosure in close proximity to that claim. Second, the proposed order (Part I.N.) prohibits any misrepresentation about the safety of any weight loss program.

Thus, PWLC in the future could not claim that its vlcd program is safe, unless that is the case.

Monitoring Practices

According to the complaint, PWLC provides its customers with diet protocols that require customers to come in to one of proposed respondents' centers three times per week for monitoring of their progress, including weighing in. In the course of regularly ascertaining weight loss progress, respondents, in some instances, are presented with weight loss results indicating that customers are losing weight significantly in excess of their projected goals, which is an indication that they may not be consuming all of the food prescribed by their diet protocol. According to the complaint, such conduct could, if not corrected promptly, result in health complications. In light of this monitoring practice, the Commission's complaint alleges that PWLC has failed to disclose to consumers who are losing weight significantly in excess of their projected goals that failing to follow the diet protocol and consume all the food prescribed could result in health complications.

The proposed consent order seeks to address the alleged monitoring misrepresentation cited in the accompanying complaint in two ways. First, the order (Part I.K.) requires PWLC to disclose in writing to all participants when they enter the program, that failure to follow the program protocol and eat all of the food recommended may involve the risk of developing serious health complications. Second, the proposed order (Part I.N.) generally prohibits any misrepresentation concerning the safety of any weight loss program.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

Statement of Commissioner Deborah K. Owen Concurring in Part and Dissenting in Part

Statement of Commissioner Deborah K. Owen concurring in part and dissenting in part in Diet Center, Inc., File No. 902–3178, Jenny Craig Inc., File No. 902–3188, Nutri/System, Inc., File No. 902–3159, Physicians Weight Loss Centers of America, Inc., File No. 902–3185, and Weight Watchers International, Inc., File No. 902–3195.

The Commission's decision to accept for public comment consent order with three major marketers of low calorie diets, and to issue Part III complaints against two others, represents an important, and largely appropriate, next step in the Commission's efforts to address allegations of false and unsubstantiated advertising claims in the diet industry. However, I must dissent on two aspects of the proposed remedies in these matters.

First, in the earlier very low calorie diet cases, I took the position that the mandated weight loss maintenance disclosures were likely to be too complex to enlighten consumers if made during short radio or TV ads.[1] I recommended requiring more concise disclosures for such broadcast ads, which would be supplemented by full disclosure at the point of sale. The contemplated relief in the present five matters adopts much of this approach, and, as such, represents a significant improvement over the very low calorie diet consents. However, this improvement would not apply where a broadcast maintenance claim includes a number, percentage, or other descriptive term to convey a quantitative measure. I am concerned that this proviso will significantly reduce, if not eliminate, the incidence of shorter, more understandable broadcast ad disclosures, without providing sufficiently compensating gains in preventing deception. Furthermore, the proviso's language regarding descriptive terms conveying a quantitative measure is vague. Appropriate, non-deceptive claims may be inadvertently chilled as a result, and vexing compliance questions may arise as respondents attempt to conform to the requirements of the orders. Accordingly, I dissent with respect to inclusion of this proviso in the proposed consents and notice orders.

Second, I dissent with regard to the notice of possible action under section 19(b) of the Federal Trade Commission Act, 15 U.S.C. 57b, in the Jenny Craig and Weight Watchers matters. Consumer redress has not been included in any of the recent settlements with marketers of very low, and low calorie diet programs, and there appear to be no distinguishable appropriate grounds for seeking this relief from Jenny Craig and Weight Watchers. Moreover, assessing consumer injury and determining levels of fair and equitable redress are apt to pose insurmountable problems for meaningful section 19(b) actions in these matters.

[FR Doc. 93–24869 Filed 10–8–93; 8:45 am]

BILLING CODE 6750–01–M

[1] See Statement Concurring in Part and Dissenting in Part in Jason Pharmaceuticals, Inc., File No. 902–3337, National Center for Nutrition, Inc., File No. 912–3024, and Sandoz Nutrition Corporation, File No. 912–3023 (Aug. 10, 1992).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Meeting of Researchers and Evaluators for Family Preservation, Family Support, and Child Welfare

AGENCY: Administration for Children, Youth and Families, (ACF), DHHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of a meeting of researchers and evaluators working in the areas of family preservation, family support, and child welfare to inform staff of the Administration for Children, Youth and Families on the state of the art in these areas. The meeting will be held on

Monday, October 25, 1993 from 10 a.m. to 4 p.m.

ADDRESSES: Department of Health and Human Services, Hubert H. Humphrey Building, room 503–A, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Deborah Roderick Stark, 330 C Street, SW., room 2026, Washington, DC 20201, (202) 205–8347.

Dated: October 6, 1993.

Joseph Mottola,

Acting Commissioner, Administration for Children, Youth and Families.

[FR Doc. 93–25035 Filed 10–8–93; 8:45 am]

BILLING CODE 4184–01–M

Health Resources and Services Administration

National Vaccine Injury Compensation Program: Revised Amount of the Average Cost of a Health Insurance Policy

The Health Resources and Services Administration is publishing an updated monetary amount of the average cost of a health insurance policy as it relates to the National Vaccine Injury Compensation Program (VICP).

Subtitle 2 of Title XXI of the Public Health Service Act, as enacted by the National Childhood Vaccine Injury Act of 1986, and as amended, governs the VICP. The VICP, administered by the Secretary, provides that a proceeding for compensation for a vaccine-related injury or death shall be initiated by service upon the Secretary and the filing of a petition with the United States Court of Federal Claims. In some cases, the injured individual may receive compensation for future lost earnings, less appropriate taxes and the "average cost of a health insurance policy, as determined by the Secretary."

Section 100.2 of the Program's implementing regulations (42 CFR part 100) provides that revised amounts of an average cost of a health insurance policy, as determined by the Secretary, are to be published from time to time in a notice in the **Federal Register**. The existing regulations cite the baseline amount of an average cost of a health insurance policy as $158.00 per month; this amount was based on data from a survey by the Health Insurance Association of America, updated by a formula using changes in the medical care component of the Consumer Price Index (CPI) (All Urban Consumers, U.S. City average) for the period July 1, 1990, through September 30, 1991.

The Secretary announces that for the 12-month period, October 1, 1991, through September 30, 1992, the medical care component of the CPI increased 7.7 percent. According to the regulatory formula (§ 100.2), 2 percent is added to the actual CPI change for each year. Therefore, the adjusted CPI change results in an increase of 9.7 percent for this 12-month period. Applied to the baseline amount of $158.00, this results in the amount of $173.33.

The CPI change for the 9-month period, October 1, 1992, through June 30, 1993, was 4.58 percent. According to the regulatory formula, three-quarters of the annual adjustment, or 1.50 percent, is added to the actual CPI change for this 9-month period. Therefore, according to the current regulatory formula, the adjusted CPI change results in an increase of 6.08 percent for this 9-month period. Applied to the $173.33 amount, this results in a new amount of $183.86.

Therefore, the Secretary announces that the revised average cost of a health insurance policy under the VICP is $183.86 per month. In accordance with § 100.2, the revised amount was effective upon its delivery by the Secretary to the United States Court of Federal Claims (formerly known as the United States Claims Court). Such notice was delivered to the Court on September 20, 1993.

Dated: October 4, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–24937 Filed 10–8–93; 8:45 am]

BILLING CODE 4160–15–P

Social Services Administration

Privacy Act of 1974; Report of New System of Records

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New system of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)), we are issuing public notice of our intent to establish a new system of records. The proposed system of records is entitled *Vocational Rehabilitation Reimbursement Case Processing System, HHS/SSA/OD, 09–60–0221*. The system will maintain information for use in determining whether a State vocational rehabilitation agency (VRA) providing vocational rehabilitation (VR) services under a State plan approved under title I of the Rehabilitation Act of 1973 or an alternate participant providing such services can be reimbursed for the costs of VR services provided to individuals while they are entitled/eligible to Social Security benefits and/or supplemental security income (SSI) payments based on disability or blindness. We also are proposing to establish routine uses of the information which will be maintained in the system. We invite public comment on this publication.

DATES: We filed a report of the proposed system with the Chairman, Committee on Government Operations of the House of Representatives, and the Chairman, Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on October 1, 1993. The proposed system, including the proposed routine uses, will become effective on December 1, 1993, unless we receive comments on or before that date which would warrant our preventing the proposal from taking effect.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Cross, Director, Division of Employment and Rehabilitation Programs, Office of Disability, Social Security Administration, 545 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–965–9066.

SUPPLEMENTARY INFORMATION:

I. Discussion of the System

Sections 222(d) and 1615(d) of the Social Security Act and the regulations promulgated thereunder (20 CFR part 404, subpart V and 20 CFR part 416, Subpart V) authorize the Secretary of HHS to reimburse State VRAs for the costs of VR services provided to individuals while they are entitled/eligible to Social Security benefits and/or SSI payments based on disability or blindness. If a State is unwilling to participate in the SSA-VR Reimbursement Program, the Commissioner of SSA may arrange for VR services to disabled and blind Social Security beneficiaries and/or SSI recipients within the State by agreement or contract with other public or private agencies, organizations, institutions, or individuals, which are referred to in the regulations as "alternate participants."

Reimbursements for the costs of VR services are made on a case-by-case basis provided it is established that:

(1) the VR services provided contributed to the individual's

performance of substantial gainful activity for a continuous period of at least 9 months;

(2) The individual medically recovered while in a VR program and continued to receive cash payments under section 225(b) and/or 1631(a)(6) of the Social Security Act; or

(3) The individual refused, without good cause, to continue or to cooperate in a VR program in such a way as to preclude his/her successful rehabilitation.

The purpose of the SSA–VR Reimbursement Program is to make VR services more readily available to the disabled and blind and to ensure long term savings to the Social Security trust funds and the general fund.

We currently maintain information concerning the SSA–VR Reimbursement Program in an automated format which provides a case processing, case control, and management information system for the VR reimbursement function and information for program evaluation purposes. In some instances, information furnished by a VRA or alternate participant may be used as a lead in determining whether an individual's disability/blindness payments should continue. Otherwise, the maintenance of data in the system about individuals who received VR services will have no impact on their rights to receive Social Security benefits/SSI payments under provisions of the Social Security Act.

We currently retrieve the information by using non-personal identifiers. For example, to retrieve data on a specific individual, we must know the identity of the VRA and the examiner in addition to the SSN of the individual who received VR services for which the VRA filed a claim for reimbursement.

This process of tracking cases is cumbersome and requires an inordinate amount of work and does not alert us when an individual had been serviced by more than one VRA or alternate participant. Further, this makes it difficult to analyze the overall impact of the SSA–VR Reimbursement Program on our beneficiary/recipient population. Therefore, we are proposing to change the manner in which we retrieve data from the system. We will be able to retrieve data by using only the SSN and name of the individual who received VR services. This change will mean that the records will constitute a system of records subject to the requirements of the Privacy Act.

II. Collection and Maintenance of Data in the System

We collect and maintain data in the system about the individuals who received VR services for which State VRAs or alternate participants are claiming reimbursement. This includes data concerning the length of time the individual received VR services and the nature and costs of those services. The data is taken from reimbursement claims forms submitted by State VRAs or alternate participants. We also include in the system data derived from existing SSA systems of records (e.g., Earnings Recording and Self-Employment Income System (09–60–0059), the Master Beneficiary Record (09–60–0090) and the Supplemental Security Income Record (09–60–0103)). These data enable us to establish that the individual was entitled/eligible to Social Security benefits/SSI payments based on disability or blindness during the period VR services were provided, to draw conclusions about the individuals who are being successfully rehabilitated, and to calculate the savings to the Social Security trust funds and the general fund.

Additionally, we will capture data relating to the individual's post-VR work activity, participation in a VR program after medical recovery, and/or reasons for failing to cooperate in a VR program through investigations conducted by SSA and State VRA field employees and by reviewing data recorded in SSA's Earnings Recording and Self-Employment Income System (09–60–0059) and Claims Folder System (09–60–0089).

III. Proposed Routine Use Disclosures of Data in the System

We are proposing to establish the following routine uses of information which will be maintained in the system:

A. *Disclosure to the State VRA or alternate participant regarding the basis for SSA's decision on its claim for reimbursement and the reason(s) the costs were allowed or denied.*

This proposed routine use would permit us to advise the State VRA or alternate participant of our decision regarding their claim for reimbursement. Only information relating to a reimbursement claim and the reason(s) costs were or were not allowed will be disclosed. This routine use will not apply to any information which is subject to the disclosure restrictions of the Internal Revenue Code (IRC) (26 U.S.C. 6103) unless disclosure of such information is specifically permitted by that statute.

B. *Disclosure to the Department of Justice (DOJ), to a court or other tribunal, or to another party before such tribunal, when:*

(1) *SSA, or any component thereof; or*

(2) *Any SSA employee in his/her official capacity; or*

(3) *SSA employee in his/her individual capacity where DOJ (or SSA, where it is authorized to do so) has agreed to represent the employee; or*

(4) *The United States or any agency thereof where SSA determines that the litigation is likely to affect SSA or any of its components,*

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal, or the other party before the tribunal is relevant and necessary to the litigation provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

This proposed routine use would permit us to disclose information from the proposed system when SSA components and/or employees are involved in litigation involving the system. The routine use also would permit disclosure in instances in which SSA brings suit or another party brings suit and SSA has an interest in the litigation. This routine use will not apply to any information which is subject to the disclosure restrictions of the IRC (26 U.S.C. 6103) unless disclosure of such information is specifically permitted by that statute.

C. *Disclosure to a congressional office in response to an inquiry from that office made at the request of the subject of the record.*

We contemplate disclosing information under this routine use only in situations in which the individual may ask his/her congressional representative to intercede in an SSA matter on his/her behalf. Information would be disclosed when the congressional representative makes an inquiry and presents evidence that he/she is acting on behalf of the individual whose record is requested. This routine use will not apply to any information which is subject to the disclosure restrictions of the IRC (26 U.S.C. 6103) unless disclosure of such information is specifically permitted by that statute.

D. *Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.*

In the administration of our programs, we find that it is not always

administratively feasible or cost effective to do certain operations "in-house." In such instances, we may use the services of contractors or other Federal agencies pursuant to an interagency reimbursable agreement to assist in performing various Agency functions. This proposed routine use would permit us to disclose information from the proposed system of records under these circumstances. This routine use will not apply to any information which is subject to the disclosure restrictions of the IRC (26 U.S.C. 6103) unless disclosure of such information is specifically permitted by that statute.

E. *Non-tax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984 for their use in conducting records management studies.*

The Administrator, GSA, and the Archivist, NARA, are charged by 44 U.S.C. 2904, with promulgating standards, procedures, and guidelines with respect to records management and the conduct of records management studies. Section 2906 of this law, also amended by the NARA Act of 1984, provides that GSA and NARA shall have access to Federal agencies' records and that agencies shall cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use would facilitate disclosure. This routine use will not apply to any information which is subject to the disclosure restrictions of the IRC (26 U.S.C. 6103).

F. *To Internal Revenue Service, for the purpose of auditing SSA's compliance with safeguard provisions of the Internal Revenue Code of 1986, as amended.*

This routine use will allow SSA to disclose information from the proposed system to the IRS for auditing purposes.

G. *Disclosure of information to the Rehabilitation Services Administration (RSA) for use in its program studies of, and development of enhancements for, State vocational rehabilitation programs to which applicants or beneficiaries under titles II and/or XVI of the Social Security Act may be referred. Data released to RSA will not include any personally identifying information (such as names or SSNs).*

This routine use will enable SSA employees to disclose statistical data to RSA. The RSA will use the data in its program studies and development of program enhancements for State VR programs which benefit applicants for, and beneficiaries of, SSA disability programs who are, or will be, participating in such VR programs. The statistical data that will be disclosed pursuant to this routine use will not be personally identifiable (such as names or SSNs). It may be theoretically possible to manipulate the statistical data with other information maintained by RSA in such a way that would identify the individuals to whom the statistics pertain. However, RSA has assured SSA that RSA will not attempt to identify these individuals and will apply appropriate safeguards measures to prevent anyone from doing so. We are publishing this routine use statement in order to ensure that disclosure of the statistical data to RSA without the consents of individuals will comply with the requirements of 5 U.S.C. 552a(b).

IV. Compatibility of the Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(a)(7) and 5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR part 401) both permit us to disclose data under a routine use for a purpose which is compatible with the purpose for which we collect information. Section 401.310 of the regulations permit us to disclose information under a routine use for administering our programs or to assist other agencies in administering similar income-maintenance or health-maintenance programs. Section 401.205 of the regulations require us to disclose information when a law specifically requires it.

The proposed routine uses identified in III.A–D and F–G above describe disclosures that will assist in the administration of SSA's programs or will assist other agencies in the administration of other programs which have purposes which are compatible with those of SSA's programs. The proposed routine use identified in III.E will allow inspection of records by GSA and NARA, as required by 44 U.S.C. 2904 and 2906, when those agencies conduct records management studies. Thus, all of the routine uses are appropriate and meet the criteria in the Privacy Act and SSA's regulations.

V. Safeguards

We will employ a number of security measures which are designed to minimize the risk of unauthorized access to, and disclosure of, personal data in the proposed system. This includes using passwords and access codes to enter the computer system which will maintain the VR reimbursement case processing records and maintaining computerized records in secured areas which are accessible only to employees who require the information to perform their assigned duties. SSA employees who have access to the data will be notified of the criminal penalties of the Privacy Act dealing with unauthorized access to, or disclosure of, information which will be maintained in the system.

Further, any contract which may be entered into with a third party, in order to develop and maintain software for the proposed system, will contain provisions which: (1) Require the contractor to establish safeguards to protect personal information received from SSA; (2) restrict the contractor's use of the information to that which is necessary to perform the contract; and (3) subject the contractor to criminal penalties for violations of the Privacy Act.

VI. Effect of the Proposed System of Records on Individual Rights

The proposed system of records will maintain information for use in determining whether a State VRA or alternate participant may be reimbursed for any or all of the costs of VR services they provided to their disabled/blind clients. We also will use information in the system to profile the types of beneficiaries/recipients who are being successfully rehabilitated so that individuals with similar profiles are targeted for rehabilitation. In some instances, we may use information furnished by a VRA or alternate participant as a lead in determining if an individual's disability/blindness payments should continue. But the primary purpose of the SSA–VR Reimbursement Program is to make VR services more readily available to the disabled and blind and to ensure that savings accrue to the Social Security trust funds and the general fund; thus, we do not believe that the proposed system will have any unwarranted adverse effect on individual rights.

Dated: September 21, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

09–60–0221

SYSTEM NAME:

Vocational Rehabilitation Reimbursement Case Processing System, HHS/SSA/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235

Social Security Administration, Office of System Operations, 6401 Security Boulevard, Baltimore, MD 21235

In addition, vocational rehabilitation (VR) reimbursement claims documents may be temporarily transferred to other locations within the Department of Health and Human Services (HHS). Contact the system manager to inquire about these addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information on disabled and blind individuals who received VR services for which State vocational rehabilitation agencies (VRA) or alternate participants seek reimbursement under sections 222(d) and 1615(d) of the Social Security Act because the individuals were entitled/eligible to Social Security benefits and/or supplemental security income (SSI) payments based on disability or blindness while receiving those VR services.

The individuals described above will be included in the system when they: (1) Performed substantial gainful activity (SGA) for a continuous period of at least 9 months as a result of VR services received or; (2) medically recovered while in a VR program and continued to receive cash payments under section 225(b) and/or 1631(a)(6) of the Social Security Act; or (3) refused, without good cause, to continue or to cooperate in a VR program in such a way as to preclude their successful rehabilitation; and (4) State VRAs or alternate participants filed claims for reimbursement of the cost of VR services rendered to the individuals. (An alternate participant is a public or private agency, organization, institution, or individual which the Commissioner of Social Security may use to provide VR services to disabled and blind beneficiaries/ recipients within a State if that State is unwilling to participate in the Social Security Administration (SSA)-VR Program or does not have an approved plan for VR services.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Data in the system consist of information such as the VR client's name, Social Security number (SSN), disability diagnosis, sex and date of birth; the SSN and identification code under which the VR client received Social Security benefits/SSI payments; the type of benefits/payments received; the monthly benefit/payment amount; information relating to the period he/she was entitled/eligible to benefits/payments and, if benefits/payments were terminated or suspended, the basis for termination/suspension; information relating to his/her yearly earnings and employment; information relating to the period he/she received VR services and the nature and costs of those services; and information required to determine if and when he/she: (1) Performed SGA for a continuous period of at least 9 months based on services the State VRA or alternate participant provided; (2) medically recovered while in a VR program and continued to receive cash payments under section 225(b) and/or 1631(a)(6) of the Social Security Act; or (3) refused, without good cause, to continue or to cooperate in a VR program in such a way as to preclude his/her successful rehabilitation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 222(d) and 1615(d) of the Social Security Act.

PURPOSE(S):

Data in this system will be used to determine if a State VRA or alternate participant can be reimbursed for the costs of VR services provided to individuals while they were entitled/eligible to Social Security benefits or SSI payments based on disability or blindness. Data also will be used for program evaluation purposes and to determine what types of individuals are being successfully rehabilitated so that Social Security beneficiaries/SSI recipients with similar profiles are targeted for rehabilitation. In some instances, information furnished by a VRA or alternate participant may be used as a lead in determining if an individual's disability/blindness payments should continue.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed for routine uses as indicated below:

1. To a State VRA or alternate participant regarding the basis for SSA's decision on its claim for reimbursement and the reason(s) costs were allowed or denied.

2. To the Department of Justice (DOJ), to a court or other tribunal, or to another party before such tribunal, when

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal, or the other party before the tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

3. To a congressional office in response to an inquiry from that office made at the request of the subject of the record.

4. Non-tax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration and the National Archives and Records Administration under 44 U.S.C. 2904 and 2906, as amended by the National Archives and Records Administration Act of 1984, for their use in conducting records management studies with respect to their duties and responsibilities.

5. Information may be disclosed to contractors or other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an Agency function relating to this system of records.

6. To the Internal Revenue Service, for the purpose of auditing SSA's compliance with safeguard provisions of the Internal Revenue Code of 1986, as amended.

7. To the Rehabilitation Services Administration (RSA) for use in its program studies of, and development of enhancements for, State vocational rehabilitation programs to which applicants or beneficiaries under titles II and/or XVI of the Social Security Act may be referred. Data released to RSA will not include any personally identifying information (such as names or SSNs).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be stored in magnetic media (e.g., computer disc packs) and, on a temporary basis, in paper form.

RETRIEVABILITY:

Data will be retrieved from the system by the SSN of the individual who received VR services for which the State

VRA or alternate participant filed the reimbursement claim.

SAFEGUARDS (ACCESS CONTROLS):

Safeguards for automated data have been established in accordance with the HHS Information Resources Management Manual, Part 6, Automated Information Systems Security Program Handbook. This includes maintaining computer disc packs or other magnetic files with personal identifiers in secured storage areas accessible only to authorized personnel. SSA employees having access to the computerized records and employees of any contractor who may be utilized to develop and maintain the software for the automated system will be notified of criminal sanctions for unauthorized disclosure of information about individuals. Also, contracts with third parties, if any, will contain language which delineates the conditions under which contractors will have access to data in the system and what safeguards must be employed to protect the data.

Manually maintained data will be stored in either lockable file cabinets within locked rooms or otherwise secured areas. Access to these records will be restricted to those employees who require them to perform their assigned duties.

RETENTION AND DISPOSAL:

Computerized records and manual data (claim applications, keyed claim forms, etc.) used in the VR claims reimbursement process will be maintained for a period of 6 years, 3 months, after the close of the fiscal year in which final adjudication was made. Means of disposal will be appropriate to the storage medium (e.g., erasure of discs, shredding of paper records, or transfer to another system of records).

SYSTEM MANAGER(S) AND ADDRESS:

Associate Commissioner, Office of Disability, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains data about him/her by writing to the system manager at the address shown above and providing his/her name, address and SSN (or the SSN under which the reimbursement claim was filed). (Furnishing the SSN is voluntary. However, searching for the individual's data will be easier and faster if it is furnished.)

An individual requesting notification of data in person need not furnish any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (e.g., credit cards, driver's license, or voter registration card). An individual requesting notification via telephone must furnish as a minimum, his/her name, date of birth, and address in order to establish identity, plus any additional information which may be specified in this section. An individual requesting notification via mail must furnish a notarized or certified statement of identity. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD ACCESS PROCEDURES:

Same as notification procedures above. Also, a requester should reasonably identify and specify the information he/she is attempting to obtain. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above. Also, an individual contesting data in the system should identify the data, specify the information he/she is contesting, state the corrective action sought, and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR part 5b.

RECORD SOURCE CATEGORIES:

Data in this system will be derived in part from other SSA systems of records (i.e., Earnings Recording and Self-Employment Income System (09–60–0059), Claims Folder System (09–60–0089), Master Beneficiary Record (09–60–0090), and Supplemental Security Income Record (09–60–0103)); the reimbursement applications submitted by State VRAs or alternate participants; earnings information provided by the wage-earner/beneficiary; and investigations conducted by SSA and State VRA field employees which relate to a VR client's post-VR work activity, participation in a VR program after medical recovery, and/or reason(s) for failing to cooperate in a VR program.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93–24943 Filed 10–8–93; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–4191–04]

Closure of Public Land in Socorro County, New Mexico.

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of emergency closure.

SUMMARY: Notice is hereby given that effective immediately, the following public land is temporarily closed to all public use and entry, including appropriation under the public land laws and mining laws.

T. 5 S., R. 6 E.,
Section 30, lots 1 through 6, NE¼, E½W½, N½SE¼,
Section 31, lots 1 through 11, E½NW¼, NE ¼SW¼, N½SE¼,
T. 6 S., R. 5 E.,
Section 1, lots 1 through 4, S½N½, S½

The following parties are exempt from this closure;

1. Bureau of Land Management personnel and their authorized representatives.
2. Any law enforcement agency in the performance of their duties.
3. All mining claim holders.
4. Joe and Jeanne Mendiburu, grazing permittees, and their representatives.

The purpose of this closure is to protect the public health and safety. The authority for this closure is 43 CFR 8364.1

DATES: This temporary closure is effective October 1, 1993 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Harlen Smith, Area Manager, Bureau of Land Management, Socorro Resource Area, 198 Neel Avenue, NW., Socorro, New Mexico 87801 or telephone at (505) 835–0412.

Dated: October 4, 1993.

Linda S.C. Rundell,

District Manager.

[FR Doc. 93–24990 Filed 10–8–93; 8:45 am]

BILLING CODE 4310–FB–M

[ID–920–03–4140–02; IDI–28116]

Notice of Revocation of the Island Park Known Geothermal Resource Area; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Known Geothermal Resource Area Revocation.

SUMMARY: The Island Park Known Geothermal Resource Area (KGRA) was defined effective April 1, 1975, solely

on the basis of competitive interest as defined in 43 CFR 3200.1(c). No hot springs or thermal activity of any kind are known to occur on lands within the KGRA and there is no evidence indicating the existence of a geothermal resource in the area. Furthermore, Congress has effectively prohibited geothermal development of the Island Park KGRA through legislation prohibiting the leasing of lands in the Island Park Geothermal Area which includes the Island Part KGRA. For the above reasons, it has been determined that the original justification for the Island Park KGRA no longer exists and the lands should be declassified.

EFFECTIVE DATE: March 5, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Mallis, Bureau of Land Management, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 384–3030.

SUPPLEMENTARY INFORMATION: The Island Park Known Geothermal Resource Area contains the following described lands:

Boise Meridian

T. 11 N., R. 42 E.
Sec. 15.
T. 12 N., R. 42 E.
Sec. 3,
Sec. 8, E½NE¼, SW¼NE¼S½
Sec. 29, 30 and 31.
T. 11 N., R. 43 N.
Secs. 7, 17, 19, 23, 26, 28, 30, 31 and 34.
T. 12 N., R. 43 E.
Secs. 2, 10, 22 and 27.
T. 10 N., R. 44 E.
Secs. 2, 5, 19, 20, 22, 24 and 33.
T. 11 N., R. 44 E.
Secs. 6, 7, 15, 19, 29, 31, 33 and 35.
T. 12 N., R. 44 E
Sec. 30.
T. 10 N., R. 45 E.
Secs. 9, 10 and 16.
T. 11 N., R. 45 E.
Secs. 5, 8, 28, 29, 33 and 34.
T. 12 N., R. 45 E.
Sec. 29.

Containing 28,539 acres in Caribou County.

Detailed information regarding this action, a description of lands included in the Island Park Known Geothermal Resource Area, and a diagram showing its boundaries are on file at the Idaho State Office of the BLM.

Purusant to authority contained in the Act of March 3, 1879, (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, and Secretarial Orders No. 3071 and 3087, the Island Park Known Geothermal Resource Area, serial number IDI–28116, is revoked effective March 5, 1993.

Bill R. LaVelle,

Deputy State Director for Mineral Resources.

[FR Doc. 93–24862 Filed 10–8–93; 8:45 am]

BILLING CODE 4310–GG–M

[ID–920–03–4140–02; IDI–28111]

Notice of Revocation of the Yellowstone Known Geothermal Resource Area; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Known Geothermal Resource Area Revocation.

SUMMARY: The Yellowstone Known Geothermal Resource Area (KGRA) was defined effective December 24, 1970 based upon its proximity to the active thermal features in Yellowstone National Park. No hot springs or thermal activity of any kind are known to occur in the region immediately west of Yellowstone National Park and there is no evidence to indicate the existence of a geothermal resource within the KGRA. Furthermore, Congress has effectively prohibited geothermal development of lands in the Yellowstone KGRA through legislation prohibiting the leasing of lands in the Island Park Geothermal Area which includes the Yellowstone KGRA. For the above reasons, it has been determined that the original justification for the Yellowstone KGRA no longer exists and the lands should be declassified.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Mallis, Bureau of Land Management, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, (208) 384–3030.

SUPPLEMENTARY INFORMATION: The Yellowstone Known Geothermal Resource Area contains the following described lands:

Boise Meridian

T. 12 N., R. 45 E.
Secs. 2, 3, 10, 11, 14, 15, 22, 23, 26, 27, 34, and 35.
T. 13 N., R. 45 E.
Secs. 2, 3, 10, 11, 14, 15, 22, 23, 26, 27, 34 and 35.
T. 14 N., R. 45 E.
Sec. 34.

Containing 14,164 acres in Caribou County.

Detailed information regarding this action, a description of lands included in the Yellowstone Known Geothermal Resource Area, and a diagram showing its boundaries are on file at the Idaho State Office of the BLM.

Pursuant to authority contained in the Act of March 3, 1879, (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1415, note), 220 Departmental Manual 2, and Secretarial Orders No. 3071 and 3087, the Yellowstone Known Geothermal Resource Area, serial number IDI–28111, is revoked effective April 1, 1993.

Bill R. LaVelle,

Deputy State Director for Mineral Resources.

[FR Doc. 93–24863 Filed 10–8–93; 8:45 am]

BILLING CODE 4310–GG–M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data

The Commission has received a requests from Gellman Research Associates, Inc. for permission to use certain data from the 1992 ICC Waybill Samples.

A copy of the of the request (WB573—9/20/93) may be obtained from the ICC Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–24964 Filed 10–8–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 92–83]

Nelson Ramirez-Gonzalez, M.D.; Revocation of Registration

On August 31, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Nelson M. Ramirez-Gonzales, M.D. (Respondent), seeking to revoke his DEA Certificate of Registration, AR1741746, under 21 U.S.C. 824(a)(5), and deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f).

Respondent filed a request for a hearing on the issues raised in the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held on March 24, 1993, in Tampa, Florida. On May 21, 1993, Judge Tenney

issued his findings of fact, conclusions of law, and recommended ruling, recommending that the Administrator revoke Respondent's DEA Certificate of Registration. No exceptions were filed, and on June 22, 1993, the administrative law judge transmitted the record in this proceeding to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that during the summer of 1988, the United States Department of Health and Human Services (DHHS) began investigating complaints from Medicare recipients in the St. Petersburg and Tampa, Florida areas concerning a medical equipment company that sold transcutaneous electronic nerve stimulator (TENS) units on a door-to-door basis. The investigation revealed that sales representatives from various medical equipment companies went door-to-door, and represented to elderly residents that Medicare had sent the salespersons to provide a pain control device for patients, specifically the TENS unit. The sales representatives further indicated that there would be no cost for these units. However, the company later billed Medicare for these units.

The administrative law judge found that the Respondent was associated with the company that was billing for these units, and was one of the physicians prescribing TENS units for these elderly patients. During the hearing in this matter, the Government presented the testimony of the DHHS agent assigned to the case. The agent testified that he interviewed the Respondent at the latter's home in November 1988, and Respondent informed him that the sales representatives for the TENS units would call the Respondent and provide Respondent with information as to the elderly patients. The Respondent would then make an appointment with a patient, conduct a home visit, perform a physical examination in the patient's home, and then prescribe the medical equipment.

The administrative law judge found that the Respondent prescribed the TENS units for elderly patients without consulting the patients' primary physicians. He further found that Medicare guidelines require a thirty-day trial period to be instituted prior to payment for a TENS unit. The physician is to sign a prescription form to the effect that a thirty-day trial period has been instituted. Respondent however, only saw the patients for one visit and did not routinely schedule any follow-up visits with the patients. The DHHS agent testified that there was no follow-up visit of the patients in over 98 percent of the Respondent's medical files. In spite of Respondent's lack of familiarity with the patients and their medical history, Respondent gave the patients vitamin shots and also prescribed other medications, including heart medications.

The DHHS agent further testified that there was no legitimate medical necessity for the TENS units that the Respondent prescribed. Many of the patients were unfamiliar with the use of the TENS units, and several turned the units in to DHHS.

The administrative law judge found that although there was no evidence that Respondent was paid any "kickbacks" by the sales representatives in return for selling the TENS units, he found that Respondent did bill Medicare for his services which included a history and physical examination, an electrocardiogram (EKG), and a Holter monitor examination of the heart. The bill to Medicare for each patient totalled $550.00.

The administrative law judge found that on November 9, 1990, in the United States Court for the Middle District of Florida, the Respondent was convicted on nine felony counts; specifically, conspiracy to defraud the United States, mail fraud, submitting false claims, and submitting false statements to the United States. The Respondent was subsequently sentenced to serve 37 months in prison, and to make restitution in the amount of $135,697.00. The United States Court of Appeals for the Eleventh Circuit affirmed the conviction of the Respondent on February 24, 1993.

As as result of Respondent's conviction, on August 9, 1991, the Director of Health Care Administrative Sanctions, Office of the Inspector General, United States Department of Health and Human Services, excluded the Respondent from participation in Medicare and any State health program of the Social Security Act, for a period of seven years pursuant to 42 U.S.C. 1320a–7(a).

The Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. 824(a), upon a finding that the registrant:

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by competent state authority and is no longer authorized by state law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of registration recommended by competent state authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section;

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to § 1320a-7(a) of title 42.

In this case, subsection (5) provides the sole basis for the suspension of revocation of the Respondent's registration. Respondent has been excluded from participation in Medicare and any State health programs for a period of seven years. There are no allegations by the Drug Enforcement Administration that the Respondent's exclusion from participation in such programs was a result of any misuse of controlled substances.

Section 824(a)(5) codifies an amendment to the Controlled Substances Act in 1987, adding the exclusion from Medicare as one of the bases for denial, revocation, or suspension of a registration to manufacture, distribute or dispense a controlled substance. See S.R. No. 100–109, 100th Cong. 1st Sess., reprinted in 1987; U.S.C.C.A.N. 680, 682. Further, the Drug Enforcement Administration has previously held that misconduct which does not involve controlled substances may constitute grounds for the revocation of a DEA Certificate of Registration. See *Gilbert L. Franklin, D.D.S.*, 57 FR 3441 (1992).

The Administrator has carefully reviewed the entire record and adopts the opinion and recommended decision of the administrative law judge. The administrative law judge found the evidence persuasive that the fraud perpetrated by the Respondent casts doubt upon his integrity, and as such supports an action against his registration. The administrative law judge also found that the Respondent's medical practice consisted largely of fraud against the Medicare program, for purely pecuniary gain. The Administrator determines that, based on the evidence in the record, the Respondent's DEA Certificate of Registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AR1741746,

previously issued to Nelson Ramirez-Gonzalez, M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and they hereby are, denied. This order is effective November 12, 1993.

Dated: October 4, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–24951 Filed 10–8–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–28, 697]

Agrico Chemical Co., Mulberry, FL; Negative Determination on Reconsideration

On August 30, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. The notice was published in the **Federal Register** on September 10, 1993 (58 FR 47762).

A company official submitted an additional list of customers and claims that the former Soviet Union (FSU) is dumping phosphate fertilizers into the U.S., especially mono-ammonium phosphate (MAP).

The Department's denial was based on the fact that the increased import criterion and the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act were not met. U.S. imports of phosphoric acid, concentrated super-phosphates and di-ammonium phosphate (DAP) were negligible relative to U.S. production in the relevant time periods.

The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey showed that the preponderance of respondents did not import in the relevant time periods.

Investigation findings show that the major product being produced at Mulberry is phosphate rock. Sales and production of phosphate rock increased, in quantity, at Mulberry in 1992 compared to 1991. The major portion of the phosphate rock is shipped to other corporate plants in Louisiana for the production of MAP and DAP. The remaining phosphate rock is either exported or used internally at Mulberry for the production of granular triple super-phosphate (GTSP) and phosphoric acid. Sales and production of GTSP at Mulberry increased in 1992 compared to 1991.

The findings show several very minor products being produced at Mulberry, most of which are intermediate products—used internally at Mulberry in the manufacture of other products. Sulphuric acid and phosphoric acid are used internally at Mulberry to produce other products. Also, technical grades of DAP and MAP called TDAP and TMAP, respectively, are produced at Mulberry but for special customers in the market. Sales and production of TDAP and TMAP remained constant in 1992 compared to 1991. Total production of TDAP and TMAP at Mulberry accounted for less than one-half of one percent of the total production at Mulberry. Workers are not separately identifiable by product.

On reconsideration the Department found that the list of customers submitted for survey were accounts only for DAP, a product not produced at Mulberry. Also, the accounts were very small.

Other findings show a significant portion of Agrico's phosphate rock going to the export market in the relevant time period. Industry experts state that the former Soviet Union, once the largest fertilizer user in the world, has cut consumption by two-thirds since the fall of communism. Industry experts state that reformers in Russia have left farmers on their own. According to industry spokesmen, in order to obtain hard currency, Russia's production of fertilizer has gone to other markets overseas formerly marketed by U.S. firms. Neither the loss of export markets or price would provide a basis for a worker group certification.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of the Agrico Chemical Company, Mulberry, Florida.

Signed at Washington, DC, this day of September 30, 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–24949 Filed 10–8–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,571]

G & L Machine South Paris, Maine; Affirmative Determination Regarding Application for Reconsideration

On September 20, 1993, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on August 12, 1993 and published in the **Federal Register** on August 27, 1993 (58 FR 45357).

The company stated that one of its major customers moved to Texas and is doing business across the border.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this day of October 1, 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93–24947 Filed 10–8–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,683]

Pictsweet Frozen Foods, Fairmont, Minnesota; Negative Determination Regarding Application for Reconsideration

By applications dated from August 22, 1993 through September 17, 1993, the workers requested administrative reconsideration of the subject petition for trade adjustment assistance (TAA). The denial notice was signed on July 30, 1993 and was published in the **Federal Register** on August 17, 1993 (58 FR 43656).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers submitted a copy of the Securities Exchange Commission's 10–K report and state, among other things, that machinery used in the processing plant is being shipped overseas.

Investigation findings show that the Fairmont workers process and package

frozen vegetables. The shipment of machinery overseas would not form a basis for a worker group certification. Only increased imports of the articles produced (frozen packaged foods) that contributed importantly to declines in sales or production and employment would form a basis for a certification.

The Department's denial was based on the fact that the decreased sales or production and increased import criteria of the Group Eligibility Requirements of the Trade Act of 1974 were not met. Sales and production of frozen vegetables at Pictsweet's Fairmont plant increased in 1992 compared to 1991 and in the first quarter of 1993 compared to the same quarter in 1992. Aggregate U.S. imports of frozen corn, peas, carrots, celery and potatoes were negligible during the relevant periods.

Company officials indicated that worker separations occurred because the parent company of Pictsweet made a decision to obtain its frozen vegetables from a domestic vegetable packer with processing plants in the Pacific Northwest rather than from Fairmont. The principle reason for this decision is the unreliable supply of raw materials which is reinforced by recent weather difficulties.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this day of September 30, 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–24948 Filed 10–8–93; 8:45 am]

BILLING CODE 4510–30–M

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation as part of the fulfillment of its role in the administration of the Federal-State unemployment compensation program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies (SESAs). The UIPLs described below are published in the **Federal Register** in order to inform the public.

Unemployment Insurance Program Letter No. 36–93

This UIPL advises SESAs that training under Title III of the Job Training Partnership Act is "approved training" under section 3304(a)(8) of the Federal Unemployment Tax Act (FUTA).

Unemployment Insurance Program Letter No. 43–93

This UIPL advises SESAs of the Department of Labor's position concerning the optional "between and within terms" denial provisions of Section 3304(a)(6)(A), FUTA.

Unemployment Insurance Program Letter No. 44–93

This UIPL advises SESAs of the Department of Labor's position regarding State options concerning (1) establishing collective liability for reimbursing employers and (2) preventing loss of interest and recovering interest lost to State unemployment funds due to the reimbursement method under sections 3304(a)(6)(B) and 3309(a)(2), FUTA.

Doug Ross,

Assistant Secretary of Labor.

Classification: UI.
Correspondence symbol: TEURL.
Date: August 6, 1993.
Directive: Unemployment Insurance Program Letter No. 36–93
To: All State Employment Security Agencies
From: Barbara Ann Farmer, Administrator for Regional Management
Subject: Training Under the Job Training Partnership Act as "Approved Training" For Unemployment Compensation Purposes
Rescissions: None.
Expiration date: August 31, 1994.

1. *Purpose.* To inform State Employment Security Agencies (SESAs) that certain individuals participating in training under the Job Training Partnership Act (JTPA) are considered to be in approved training under Section 3304(a)(8), Federal Unemployment Tax Act (FUTA).

2. *References.* Section 314(f), JTPA, as amended by Section 301 of P.L. 102–367 (The Job Training Reform Amendments of 1992), and Section 3304(a)(8), FUTA.

3. *Background.* Section 3304(a)(8), FUTA, requires, as a condition for employers in a State to receive normal credit against the Federal tax, that a State's unemployment compensation (UC) law provide that:

compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work) * * *.

Title III, JTPA, contains certain employment and training provisions specifically related to dislocated workers. In its original enactment (Public Law (P. L.) 97–300), JTPA included a provision which the Department of Labor (Department) interpreted as requiring that acceptance of training under Title III, JTPA, was to be considered approved training under Section 3304(a)(8), FUTA. The reauthorization of JTPA (Pub. L. 99–496) did not include a similar provision; however, Department regulations at 20 CFR 631.4 (1992) imposed such a requirement. The recently enacted Public Law 102–367, the Job Training Reform Amendment of 1992, again included such a provision related to approved training. Specifically, section 301(2) of Public Law 102–367 added new section 314(f)(2) to JTPA. This section provides:

An eligible dislocated worker participating in training (except for on-the-job training) under this title [i.e., Title III] shall be deemed to be in training with the approval of the State agency for purposes of section 3304(a)(8) of the Internal Revenue Code of 1986 [i.e., Section 3304(a)(8), FUTA].

This provision is implemented in regulations at 20 CFR 631.4 (57 FR 62004, 62063).

4. *Discussion.* Section 3304(a)(8), FUTA, requires a State to allow an individual in an approved training course to receive UC and to prohibit denial based on State law provisions relating to availability for work, active search for work, or refusal of work. Ordinarily, each State is free to determine whether training is appropriate for a claimant, to establish the criteria for approval of a training course, and to adopt safeguards to assure that the claimant is actually attending approved training. Section 314(f)(2), JTPA, however, preempts State agency discretion to approve training in one area. A State must consider training under Title III of JTPA to be "approved" training within the meaning of section 3304(a)(8), FUTA.

This amendment to JTPA applies only to those individuals actually participating in training under Title III, JTPA. It does not apply to individuals who are merely enrolled, accepted in, or planning to attend such training. Nor, by its terms, does it apply to on-the-job training. States do, however, have the option of considering whether individuals participating in training under other titles of JTPA are in "approved" training.

Section 3304(a)(8), FUTA, prohibits the denial of compensation to a trainee in an approved training course based on State law requirements relating to availability for work, active search for work, or refusal of work. However, an individual participating in training under Title III, JTPA, who does not meet other State UC eligibility requirements is not entitled to UC. For example, Title III, JTPA, permits individuals who have exhausted their compensation to participate in training programs. These individuals remain ineligible for UC because of State law regarding exhaustion of compensation, despite participation in training under Title III, JTPA. Individuals must satisfy all other

basic State law requirements for eligibility, such as establishing sufficient qualifying wages or showing good cause for voluntarily leaving employment. These requirements are not waived by any provision of JTPA or FUTA.

5. *Effective Date.* Under section 701(a) of Public Law 102–367, the amendments made by such act "shall take effect on July 1, 1993" except as otherwise provided. Since no other provision designates an effective date for section 314(f), it is effective July 1, 1993.

6. *Action Required.* States should review their laws to assure that individuals participating in training (except for on-the-job training) under Title III, JTPA, are in "approved" training under State laws.

7. *Inquiries.* Direct inquiries to the appropriate Regional Office.

Classification; UI.

Correspondence symbol: TEURL.

Date: September 13, 1993.

Directive: Unemployment Insurance Program Letter No. 43–93

To: All State Employment Security Agencies

From: Barbara Ann Farmer, Administrator for Regional Management

Subject: Optional Between and Within Terms Denial Provisions of Section 3304(a)(6)(A) of the Federal Unemployment Tax Act

Rescissions: None.

Expiration date: September 30, 1994.

1. *Purpose.* To advise State employment security agencies of the Department of Labor's ("Department") new position concerning the application of the optional between and within terms denial provisions.

2. *References.* Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA), UIPL No. 18–78, dated March 6, 1978; UIPL No. 4–83, dated November 15, 1982; UIPL No. 41–83, dated September 13, 1983; UIPL No. 30–85, dated July 12, 1985, (50 FR 48274, 48280); UIPL No. 11–86, dated January 31, 1986; UIPL No. 15–92, dated January 27, 1992, (57 FR 7795, 7796); the *Draft Language and Commentary to Implement the Unemployment Compensation Amendments of 1976–P.L. 94–566* ("*1976 Draft Language*"); and Supplements 1 through 5 to the *1976 Draft Language.*

3. *Background.* Section 3304(a)(6)(A), FUTA, requires each State to pay unemployment compensation (UC) based on services performed for certain governmental entities and nonprofit organizations. UC is to be paid based on these services "on the same terms, and subject to the same conditions as compensation payable on the basis of other service" covered by the State law. This is commonly referred to as the "equal treatment" requirement. Exceptions to the equal treatment requirement are found in six distinct clauses of section 3304(a)(6)(A), FUTA. These provisions are commonly referred to as the "between and within terms denial" provisions.

Some of the between and within terms denial provisions are required as a condition of certification of State law by the Secretary of Labor. Others are optional. The following describes which provisions are required and which are optional:

Required: Denial between and within terms based on services performed in an instructional, research or principal administrative (i.e., a "professional") capacity for either an educational institution or an educational service agency (ESA). (Clauses (i), (iii) and (iv) of Section 3304(a)(6)(A), FUTA.)

Optional:

(1) Denial between and within terms based on services performed in other than an instructional, research or principal administrative (i.e., a "nonprofessional") capacity for either an educational institution or an ESA. (Clause (ii); clauses (iii) and (iv) which are made optional for nonprofessional services by clause (vi), all of section 3304(a)(6)(A), FUTA.)

(2) Denial between and within terms based on services performed in either a professional or nonprofessional capacity when the services are provided to or on behalf of an educational institution. (Clause (v) of section 3304(a)(6)(A), FUTA.)

In the past, the Department had taken the position that, if an optional denial clause is enacted by a State, it must be applied equally to all services described in that clause. UIPL No. 15–92, the Department's most recent issuance on the optional clauses, provided that a State may not apply the optional denial to some nonprofessional services while excluding other nonprofessional services. UIPL No. 15–92 also restated the Department's position that "if State law contained a provision implementing clause (v), it was required to apply equally to *all* services described in Section 3304(a)(6)(A)(i)–(iv)." (Emphasis in original.)

The Department has reconsidered its position and concluded that, if a State so chooses, an optional denial clause need not be applied to all services described in that clause. In addition, the Department has concluded that States have other options concerning the implementation of the optional clauses. This UIPL is issued to provide the Department's new position to the States. Any previous Departmental position conflicting with this new position is superseded.

3. *Discussion.* As noted above, the between and within terms denial provisions are exceptions to the equal treatment requirement of section 3304(a)(6)(A), FUTA. The equal treatment requirement only describes the relationship of the services required to be covered by section 3304(a)(6)(A), FUTA, to other services covered by State law. It does not address how exceptions to its requirements are to be applied. Therefore, the equal treatment requirement is not relevant to this matter.

Those clauses of section 3304(a)(6)(A), FUTA, which provide for the optional application of the between and within terms denial all provide that UC "may be denied." It is clear that the denial contained in these clauses is discretionary. No optional clause explicitly requires that all provisions of the clause be applied.

Social legislation such as the FUTA is to be construed broadly with respect to coverage and benefits. Exceptions to its statutory remedies are to be narrowly construed. (See *United States* v. *Silk,* 331 U.S. 704, 712 (1947).) Accordingly, since the denial provisions are exceptions to the broad coverage provisions of section 3304(A)(6)(A), they are given a narrow reading. The narrower reading in this case dictates that the application of an optional clause may be limited as to scope and/or time by a State.

Such a reading, which permits a State to differentiate among services, or to otherwise limit application of a clause, could also result in extending coverage to the broadest number of unemployed persons, thereby accomplishing the basic purpose of the coverage requirements of section 3304(a)(6)(A), FUTA. That is because States could choose to not apply the optional provisions to those services performed by classes of workers more deeply affected by unemployment.

This discussion also indicates that an optional denial clause is not to be treated as an absolute which the States must implement in its entirety, but instead as a ceiling beyond which a State may not go without violating the equal treatment requirement of section 3304(a)(6)(A), FUTA; a lesser application is possible. This approach has previously been followed by the Department where a "reasonable assurance" was required if a State implemented an optional clause. As was also noted in UIPL No. 15–92:

States do have the option of adopting a more restrictive test than the "reasonable assurance" test for nonprofessional services. For example, instead of requiring the reasonable assurance requirement as specified under clause (ii), the State law may include a provision requiring a contract to return to work in the next year or term.

Applying this concept to the optional denial clauses, States are henceforth granted discretion to apply any optional clause to some or all of the classes of services described in that clause. The term "classes of services" pertains to services performed as, for example, a custodian, cafeteria worker, bus driver, clerical worker or other nonprofessional class. Similarly, States may also limit the time period to which the optional clauses apply.

Once a State elects to limit the application of a clause, the limitation must be uniformly applied throughout the State. A State may not, for example, treat services performed for one school district differently than services performed in another school district or treat services performed in a nonprofit educational institution differently from services performed in a public educational institution. This is because the denial clauses refer explicitly to "services" and certain periods of time, thereby providing a basis for providing the States the option to limit the provisions of an optional denial clause to particular classes of services or periods of time. There is no similar reference in the statute to schools, school districts or other geographical and political subdivisions and, therefore, no basis for allowing disparate treatment of such geographical or political subdivisions.

4. *Interpretation and Application.* The clauses of Section 3304(a)(6)(A), FUTA, relating to the optional application of the between and within terms denials to "nonprofessional" services are interpreted as follows:

An optional clause represents an exception to the equal treatment requirement beyond which a State may not go. However, States may limit the application of the clause in the following situations, provided the limitation is applied uniformly throughout the State:

(1) Clause (ii)(I) may be applied to some or all of the classes of services described in that clause. The term "clauses of services" pertains to services performed as, for example, a custodian, cafeteria worker, bus driver, clerical worker or other nonprofessional class.

(2) A more restrictive test than the "reasonable assurance" test required under the Department's interpretation of that term may be adopted.

(3) The denial period may be limited to a shorter period than the period specified in clause (ii)(I), and the denial period may be applied only to selected vacation periods or holiday recesses specified in clause (iii).

5. *Action Required.* State Administrators should provide this information to appropriate staff.

6. *Inquiries.* Inquiries should be directed to the appropriate Regional Office.

Classification: UI/FUTA.

Correspondence Symbol: TEURL.

Directive: Unemployment Insurance Program Letter No. 44–93

To: All State Employment Security Agencies

From: Barbara Ann Farmer, Administrator for Regional Management

Subject: Sections 3304(a)(6)(B) and 3309(a)(2) of the Federal Unemployment Tax Act Relating to Liabilities of Reimbursing Employers

Rescissions: None.

Expiration Date: September 30, 1994.

1. *Purpose.* To advise States of the Department of Labor's position regarding State options concerning (1) establishing collective liability for reimbursing employers and (2) preventing loss of interest and recovering interest lost to State unemployment funds due to the reimbursement method.

2. *References.* Sections 3304(a)(6)(B) and 3309(a)(2) of the Federal Unemployment Tax Act (FUTA); Unemployment Insurance Program letter (UIPL) No. 21–80 dated February 29, 1980, UIPL No. 14–86 dated February 6, 1986; and the Draft Legislation to Implement the Employment Security Amendments of 1970 . . . H.R. 14705 ("1970 Draft Legislation").

3. *Background.* Section 3304(a)(6)(B), FUTA, requires that nonprofit organizations described in section 501(c)(3) of the Internal Revenue Code and all State and local governmental entities must be liable for contributions under State law. However, this section also provides that these entities must be given, under State law, the option of electing to make payments in lieu of contributions (i.e., reimbursements) as the method of financing their liability for unemployment compensation (UC) costs, on the basis set forth in section 3309(a)(2), FUTA. Section 3309(a)(2), FUTA, provides that:

(2) The State law shall provide that a governmental entity or any other organization (or group of governmental entities or other organizations) which, but for the requirements of this paragraph, would be liable for contributions with respect to service to which paragraph (1) applies may elect, for such minimum period and at such time as may be provided by State law, to pay (in lieu of such contributions) into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to such service. The State law may provide safeguards to ensure that governmental entities or other organizations so electing will make the payments required under such elections.

Initially, the Department of Labor took the position that Section 3309(a)(2) required reimbursing employers to reimburse all UC costs based on services performed for these employers. This position was modified by the Secretary of Labor in a 1979 conformity proceeding involving the States of Delaware, New Jersey and New York. Specifically, the Secretary found that whether the UC paid out is attributable to service in the employ of a reimbursing employer (and, therefore, whether the UC costs must be reimbursed by that employer) is to be determined under provisions of State UC laws which reasonably interpret and implement Section 3309(a)(2), FUTA.

UIPL No. 21–80, dated February 29, 1980, transmitted this decision of the Secretary to the States and provided guidance on the application of the decision. One of the effects of the Secretary's decision was that there was now the possibility of large amounts of unrecovered UC costs when costs were not attributed to a particular reimbursing employer. As a result, UIPL No. 21–80 discussed the establishment of "collective liability" for reimbursing employers. UIPL No. 21–80, in relevant part, provided that the States should be aware of:

a. [their] responsibility for assuring that reimbursing employers pay a fair share of their benefit costs. As a means of doing so, the States may wish to adopt a principle whereby benefits are attributed to service in the employ of reimbursing employers collectively when, under specified conditions, they are not attributable to service in the employ of a particular reimbursing employer. The collective liability may be discharged by requiring (or allowing, if optional) reimbursing employers to pay, at specified times and at specified rates, amounts attributed collectively. If the allocation of individual amounts due to discharge a collective liability should place upon a reimbursing employer a larger obligation that [sic] it would have had as a contributing employer, such an obligation is not inconsistent with the reimbursement option. That is a risk inherent in election of such an option.

In recent years, the Department has learned that not all States are aware of the option of establishing collective liability. As a result, State unemployment funds are sometimes incurring substantial losses.

This UIPL expands on the guidance provided in UIPL 21–80 concerning the establishment of collective liability. It also addresses the prevention of loss of interest and recovering interest lost due to the reimbursement method.

4. *Liability for Unrecovered UC Costs.*

a. *Establishment of Collective Liability.* As noted above, UIPL 21–80 gave States the option of establishing "collective liability" in order to assure that reimbursing employers pay a fair share of unrecovered UC costs. This principle was based on Section 3309(a)(2), FUTA. The words "compensation attributable" as used in section 3309(a)(2), FUTA, permit States to include the employer's share of all UC costs not recovered through reimbursements, as well as those benefits specifically attributable to service for that employer. Although nothing in Federal law prohibits contributory employers from subsidizing reimbursing employers, this broad reading of Section 3309(a)(2), FUTA, permits States to take steps to minimize such subsidizing, thereby preventing a drain on State unemployment funds. This would be accomplished by permitting States to require that all reimbursing employers bear their fair share of the costs of UC. See UIPL No. 21–80.

Collective liability may be discharged by requiring reimbursing employers to pay, at specified times and at specified rates, amounts attributed collectively through establishment of a separate payment. As noted in UIPL No. 21–80, if the allocation of individual amounts due to discharge a collective liability places a larger obligation upon a reimbursing employer than it would have had as a contributing employer, this obligation is a risk inherent in electing the reimbursement option.

Any payments established to discharge the collective liability required of reimbursing employers must not exceed the actual amount of collective liability for such employers. Collective liability may be up to one hundred percent of unreimbursed UC costs, but reimbursing employers may not be singled out and required to pay more than one hundred percent of UC costs as this would discourage employers from electing the reimbursing option. Such action would be contrary to Section 3309(a)(2), FUTA.

b. *Payments From Contributing and Reimbursing Employers.* Collective liability may also be discharged through socializing unrecovered UC costs among all employers, without regard to whether the employer was a contributing or reimbursing employer. Since, in this case, a uniform rate would be applied to both contributing and reimbursing employers, reimbursing employers would not be singled out and there would be no conflict with section 3309(a), FUTA, when:

(1) Provision of State law relating to charging of reimbursing employers are either the same as they are for contributing employer or serve to decrease the liability of reimbursing employers when compared to contributing employers; and

(2) Unrecovered UC costs, as a percentage of total UC costs, are not greater for contributing than reimbursing employers.

If either of these two conditions is not met, reimbursing employers would improperly subsidize the contributing employer's unrecovered UC costs. In the event a State chooses this uniform payment method, the Department will require the State to demonstrate that the above two conditions are met.

c. *Distinctions between Reimbursing Employers.* Just as contributing employers need not subsidize reimbursing employers, reimbursing employers with only small amounts of unrecovered UC costs need not subsidize reimbursing employers with large amounts of unrecovered costs. Therefore, States may distinguish among groups of reimbursing employers on this basis. To be acceptable, any distinction must be based upon differences relating only to unrecovered UC costs, so that each employer bears its fair share of unrecovered UC costs. For example, a State may assign one payment rate for "high risk" employers based on the total of such employers' unrecovered UC costs and another payment rate to "low risk" reimbursing employers based on the total of their unrecovered UC costs. Left to the State are the number of payment rates based on "risk" categories.

5. *Lost Interest.* Reimbursing employers retain the use of moneys between the time the State pays UC from its unemployment fund and the employer reimburses the fund. During this time, the unemployment fund loses interest it would otherwise have earned. Although section 3309(a)(2), FUTA, is silent on the matter of interest loss, sound cash management principles dictate that the solvency of the State unemployment fund be protected. States may, therefore, prevent this loss to the unemployment fund by requiring either advance payments or additional payments.

a. *Advance Payments.* Section 3309(a)(2), FUTA, has been interpreted to permit a State to require a reimbursing employer to make advance payments of potential reimbursing liability for immediate deposit into the State's unemployment fund, based on the estimated amount of UC likely to be attributed to the employer for an upcoming period. In addition, the last sentence of section 3309(a)(2), FUTA, provides that "[t]he State law may provide safeguards to ensure that governmental entities or other organizations so electing will make the payments required under such elections." Requiring payments in advance is just such a safeguard. The 1970 Draft Legislation, pages 76–79 and 98–99 provided for the making of optional advance payments.

Under this option, reimbursing employers may be required to make advance payments at the beginning of a period (for example, a calendar quarter or a calendar year) based upon estimated UC costs that will likely be attributable to that employer during that period. At the end of the period, the advance payment is reconciled with actual UC payments determined to be attributable to the employer for purposes of determining if the advance payment is too great or too small, and adjustments (e.g., credits toward future advance payments, refunds, or additional payments received in order to obtain full reimbursement) are then made as appropriate. A somewhat similar scheme, with a requirement for an annual accounting and for authorization to collect unpaid balances and dispose of excessive payments, is described in detail in the 1970 Draft Legislation, pages 76–79.

b. *Additional Payments for Lost Interest.* Alternatively, States may require reimbursing employers to make additional payments to the unemployment fund to cover any interest lost.

Under this approach, States assess interest for the period from the date a UC payment is made to the date the employer reimburses the unemployment fund for that payment. A State may determine this liability separately for each employer or for reimbursing employers as a whole. In the latter case, an identical payment rate would be assessed each employer and applied to the amount of reimbursements made such employer. The State will need to determine the period between the time UC is paid and reimbursement is received. States may use the actual time lag or a reasonable estimate of the time lag. For example, when liability is determined for reimbursing employers as a whole, the State may estimate the average time lag based on a sample of reimbursing employers. Under this approach, employers who reimbuse promptly will subsidize those who are delinquent. To avoid this, a State may assign different payment rates based on the time lag, or a reasonable estimate of the time lag, which applies to prompt or delinquent employers. For example, employers who pay promptly may be assigned one payment rate while delinquent employers may be assigned a higher payment rate.

Reimbursing employers may not be assessed an additional cost not related to the reimbursement option as this would discourage election of the reimbursement option in conflict with section 3309(a)(2), FUTA. Concerning additional interest payments, this means that, ideally, a State would not assess a payment rate which produces more revenue than the interest rate that would have been applicable had the moneys remained in the State unemployment fund. However, because the interest rate for the Unemployment Trust Fund (UTF) is not available until after the end of the quarter to which the rate pertains, this is impossible. A State may instead use the average rate of earnings in the UTF for the prior calendar year, for the last quarter of the prior calendar year, or for a more recent quarter.

6. *Sharable Benefits.* When a State's unemployment fund is reimbursed for UC costs by the Federal government, as in the case of sharable benefits under the Federal-State Extended Unemployment Compensation Act of 1970, as amended, reimbursing employer may be relieved of liability to the extent that the unemployment fund is reimbursed by the Federal Government. Refer to 20 CFR 615.10(b) and also to UIPL 14–86, page 9.

7. *Action Required.* Administrators are requested to provide the above information to appropriate staff.

8. *Inquiries.* Direct inquiries to the appropriate Regional Office.

[FR Doc. 93–24877 Filed 10–8–93; 8:45 am]
BILLING CODE 4510–30–M

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Regarding the Attestation Process: Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process: Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's

attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR Part 655 and 29 CFR Part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 4th day of October 1993.

Robert A. Schaerfl,

Director, United States Employment Service.

Division of Foreign Labor Certifications Approved Attestations 9/1/93 to 9/30/93

CEO—Name/facility name/address	State	Approval date
Mr. Robert F. Theilmann, Central Arizona Medical Ctr., 450 West Adamsville Road, Florence 85232, 602–868–5841	AZ	9/8/93
Mr. Robert F. Theilmann, Casa Grande Regional Medical Ctr., Casa Grande 85222, 602–426–6300	AZ	9/20/93
Sr. Elizabeth Joseph Keaveney, St. Francis Medical Ctr., 3630 East Imperial Highway, Lynwood 90262, 310–603–6930.	CA	9/1/93
Gene Burleson/Tess Mohr, Tarzana Rehabilitation Center, 5650 Reseda Boulevard, Tarzana 91356, 818–881–4261	CA	9/1/93
Mr. Steven Mattachione, Orthopaedic Hospital, 2400 S. Flower Street, Los Angeles 90007, 213–742–1114	CA	9/8/93
Bernard F. Hyatt, Bonnie Brae Convalescent Hosp., 420 South Bonnie Brae Street, Los Angeles 90057, 213–483–8144.	CA	9/8/93
Ms. Jean R. Murphy, CSM Home Health Services, Inc., 1562 Wilshire Blvd., Los Angeles 90010, 213–380–2259	CA	9/9/93
Ms. Marietta Subbert, Unicare Health Services, 3400 W. 6th Street, suite 303, Los Angeles 90020, 213–385–9470	CA	9/13/93
Mr. Cory Glad, Parkview Care Ctr., Walker Management, Delano 93215, 916–742–7311	CA	9/15/93
Mr. Cory Glad, Terrace Care Ctr., Walker Management, Delano 93215, 916–671–0550	CA	9/15/93
Mr. Cory Glad, Lorel Way Care Ctr., Walker Management, Delano 93215, 916–674–9140	CA	9/15/93
Mr. Femy Santos, Menlo Place, 16221–23 Menlo Avenue, Gardena 90247, 310–329–8853	CA	9/17/93
Mr. Raymond N. Smith, Community Hospital of Gardena, Gardena Physicians Hospital, Inc., Gardena 90247, 310–768–2267.	CA	9/20/93
Mr. Nemesio Mabini, Jr., Dial 4 Care Home Health Services, Inc., San Gabriel 91776, 818–451–6699	CA	9/24/93
Mr. Solomon Goldner, Goldenstate Manor Conv. Hospital, Bakersfield 93301, 805–327–7687	CA	9/29/93
Mr. Solomon Goldner, San Joaquin Care Center, Goldenstate Palms Inc., Bakersfield 93305, 805–872–2324	CA	9/29/93
Mr. Albert E. Ebuen, Exproserv Unlimited, 550 East 8th Street, National City 91950, 619–477–2477	CA	9/29/93
Mr. Solomon Goldner, Parkview Real Conv. Hospital, Rosemead Sanitarium, Inc., Bakersfield 93309, 805–327–7107.	CA	9/29/93
Mr. Charles S. Ricks, White Memorial Med. Ctr., 1720 Brooklyn Avenue, Los Angeles 90033, 213–268–5000	CA	9/30/93
Mr. Harold L. Stewart, Bay St. George Care Center, Begonia & HI-Way 98, Eastpoint 32328, 904–670–8571	FL	9/7/93
Mr. Richard Ninis, Sunshine Village Nursing Home, Inc., Pinellas Park 34666, 813–541–7515	FL	9/7/93
Mr. Harold L. Stewart, Bay St. Joseph Care Center, 220 9th Street, Port St. Joe 32456, 904–229–8244	FL	9/7/93
Mr. Harold L. Stewart, Apalachicola Health Care Ctr., 150 10th Street, Apalachicola 32320, 904–653–8844	FL	9/8/93
Ms. Kathleen T. DuCasse, Miami Heart Institute North, 4701 Meridian Avenue, Miami Beach 33140, 305–672–1111	FL	9/8/93
Mr. Robert Meade, Dade City Hospital, 1550 Fort King Road, Dade City 33528, 904–521–1165	FL	9/13/93
Mr. Lance Anastasio, Winter Haven Hospital, Inc., 200 Avenue F, NE., Winter Haven 33881, 813–297–1818	FL	9/20/93
Mr. Anthony Liuzzo, University Nursing Care Ctr., Inc., Gainesville 32608, 904–376–8821	FL	9/20/93
Mr. Dominick Bianco, Coral Gables Hospital, 3100 Douglas Road, Coral Gables 33134, 305–445–8461	FL	9/22/93
Ms. Martha Musino, Comprehensive Medical Services, Inc., Miami 33166, 305–477–4701	FL	9/29/93
Ms. Ruth Jordan, Oak Manor Village, 3500 Oak Manor Lane, Largo 34644, 813–581–9427	FL	9/30/93
Ms. Kay F. Broman, Medical College of Georgia Hospital & Clinics, Augusta 30912, 706–721–3921	GA	9/28/93
Richard P. Blinn, Hillhaven Rehab. and Conval., 26 Towers Road, NE., Marietta 30090, 404–422–8913	GA	9/30/93
Richard P. Blinn, Savannah Convalescent Center, 815 East 63rd Street, Savannah 31405, 912–352–8615	GA	9/30/93
Rev. Frank Chong, Waikiki Health Ctr., 277 Ohua Avenue, Honolulu 96815, 808–922–4787	HI	9/22/93
Mr. John Samatas, Lexington Health Care Ctr. of Lombard, Inc., Lombard 60148, 708–495–1700	IL	9/1/93
Mr. Joseph F. Warner, Heritage Manor Nursing and Conval. Home at Springfield, Springfield 62702, 217–789–0930	IL	9/1/93
Mr. Richard Schutt, Rest Haven West Christian N.C., 3450 Saratoga Avenue, Downers Grove 60515, 708–969–2900.	IL	9/1/93
Mr. Joseph F. Warner, Heritage Manor Nursing and Conval. Home at Normal, Normal 61761, 309–452–7468	IL	9/1/93
Mr. John Samatas, Lexington Health Care Ctr. of Bloomingdale, Inc., Bloomingdale 60108, 708–495–1700	IL	9/1/93
Mr. John Samatas, Lexington Health Care Ctr. of Schaumburg, Inc., Schaumburg 60193, 708–495–1700	IL	9/13/93
Mr. Marvin Mermelstein, Central Nursing Home, Inc., 2450 North Central Avenue, Chicago 60639, 312–889–1333	IL	9/13/93
Mr. Philip S. Deleon, Jr., The Abington of Glenview, 3901 Glenview Road, Glenview 60025, 708–729–0000	IL	9/20/93
Mr. Harold Lederman, Windsor Manor Nursing and Rehab. Ctr., Ltd., Palos Hills 60465, 708–598–3460	IL	9/29/93
Mr. Jes Cole, Villa Scalabrini, 480 North Wolf Road, Northlake 60164, 708–562–0040	IL	9/30/93
Mr. Wayne Swiniarski, West Calcasieu Cameron, 701 East Cypress Street, Sulphur 70664, 318–527–4280	LA	9/1/93

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 9/1/93 TO 9/30/93—Continued

CEO—Name/facility name/address	State	Approval date
Mr. Richard P. Blinn, Presentation Manor Nursing Home, The Hillhaven Corporation, Brighton 02135, 617–782–8113.	MA	9/30/93
Emma S. Resumadero, Total Healthcare Resource, Inc., 9300 Livingston Road, Fort Washington 20744, 301–248–9619.	MD	9/1/93
Mr. Frank P. Iacobell, Hutzel Hospital, 4707 St. Antoine, Detroit 48201, 313–745–7015	MI	9/13/93
Mr. G. Wayne Schuler, Madison General Hospital, Highway 16 East, Canton 39046, 601–859–1331	MS	9/10/93
Ms. Debra Griffin, Humphreys County Mem. Hosp., P.O. Box 510, Belzoni 39032, 601–247–3831	MS	9/13/93
Joseph Thomas Bland, Montfort Jones Memorial Hospital, P.O. Box 677, Highway 12 West, Kosciusko 39090, 601–289–4311.	MS	9/20/93
Mr. David Wilson, Brian Center Nursing Care, 6000 Fayetteville Rd., Durham 27713, 919–544–9021	NC	9/7/93
Ms. Frances L. Messer, Northwood Manor Nursing Ctr., 303 E. Carver Street, Durham 27704, 919–471–4558	NC	9/8/93
Mr. Richard Hess, The Evergreens, Inc., 4007 W. Wendover Avenue, Greensboro 27407, 919–292–8620	NC	9/13/93
Mr. Leslie Jarema, Meadowbrook Terrace of North Raleigh, Raleigh 27615, 919–878–7772	NC	9/20/93
Ms. Crystal Sims, Brian Center Nursing Care, 520 Valley Street, Statesville 28677, 704–873–0517	NC	9/22/93
Mr. Nolan G. Brown, Louisburg Nursing Ctr., Inc., P.O. Box 629, Louisburg 27549, 919–496–2188	NC	9/29/93
Mr. Chris Asmann-Frinch, Regent Care Center, 50 Polifly Road, Hackensack 07601, 201–646–1166	NJ	9/7/93
Ms. Nadine Sibila, Eastern Shore Nursing and Convalescent Ctr., Cape May Court House 08210, 609–465–2260	NJ	9/8/93
Ms. Dana K. Barnett, Union County General Hospital, 301 Harding Street, Clayton 88415, 505–374–2585	NM	9/29/93
Mr. H.W. Handy, Mountain Shadows Nursing & Rehab. Ctr., Las Cruces 88005, 505–523–4573	NM	9/30/93
Mr. Paul Baine, H–B Management Services Corp., 1072 Grand Concourse, Bronx 10456, 718–681–4000	NY	9/15/93
Mr. W. Richard Zacher, Manhattan Manor, 300 Manhattan Avenue, Buffalo 14214, 716–838–5460	NY	9/17/93
Mr. Renate Wack, Kirby Forensic Psychiatric Ctr., New York 10035, 212–427–9003	NY	9/20/93
Ms. Juliana Santos Sison, On-Call Staffing, Inc., 55 West 47th Street, New York 10036, 212–398–9558	NY	9/29/93
Ms. Celia Strow, The Grace Plaza of Great Neck, Inc., Great Neck 11021, 516–466–3001	NY	9/30/93
Mr. Richard L. Petrillo, The Mount Vernon Hospital, 12 North Seventh Ave., Mount Vernon 10550, 914–664–8000	NY	9/30/93
Mr. Bruce Feldman, Home Health Corp. of America, 2101 Brandywine Street, Philadelphia 19130, 215–568–2715	PA	9/9/93
Mr. Harold Hunter, Jr., Williamsburg County Memorial Hospital, Kingstree 29556, 803–354–9661	SC	9/15/93
Ron Frizzell, Healthcare Resources, Inc., 5050 Thoroughbred Lane, suite C, Brentwood 37027, 615–377–9140	TN	9/7/93
Mr. Stephen C. Reynolds, Baptist Memorial Hospital, Employment Services, Memphis 38146, 901–227–5090	TN	9/10/93
Mr. H. Thomas Nichols, Jr., Vintage Health Resources, Inc., 2032 Exeter Road, Germantown 38138, 901–757–8899.	TN	9/15/93
Mr. Luis G. Silva, AMI Park Place Medical Ctr., AMI Hospitals of Texas, LTD, Port Arthur 77642, 409–983–4951	TX	9/8/93
Mr. Luis G. Silva, AMI Mid Jefferson Hospital, AMI Hospitals of Texas Ltd., Nederland 77627, 409–985–0303	TX	9/8/93
Sister Gretchen Kunz, St. Joseph Hospital & Health Center, Bryan 77802, 409–776–2515	TX	9/13/93
Mr. William Burns, HCA Rio Grande Regional Hospital, 101 E. Ridge Road, McAllen 78503, 210–632–6000	TX	9/17/93
Mr. William A. Gregory, Diagnostic Center Hospital, 6447 Main, Houston 77030, 713–790–0790	TX	9/17/93
Art Layne, Brownwood Regional Hospital, P.O. Box 760, Brownwood 76804, 915–646–8541	TX	9/20/93
Mr. Robert W. Vanderveer, Knapp Medical Center, 1401 East Eighth, Weslaco 78596, 210–968–8567	TX	9/20/93
Mr. Harvey L. Fishers, Navarro Regional Hospital, 3201 W. Highway 22, Corsicana 75110, 903–872–4861	TX	9/22/93
Mr. Jeffrey E. Hausler, Wichita General Service Corporation, Wichita Falls 76301, 817–761–8291	TX	9/22/93
Mr. Antony Bunker, St. Paul Medical Ctr., 5909 Harry Hines Blvd., Dallas 75235, 800–388–2723	TX	9/28/93
Mr. Hector Hernandez, Doctors Hospital of Laredo, Ltd., Laredo 78041, 210–723–1131	TX	9/29/93
Mr. Arron Jewell, Pleasant Star Manor, 2700 Pleasanton Road, San Antonio 78221, 512–924–8183	TX	9/29/93
Mr. Art Gonzales, St. Joseph's Hospital, 1401 South Main St., Fort Worth 76104, 817–347–1417	TX	9/29/93
Mr. Charles V. Rice, IHS–I, 5160 Parkstone Drive, Chantilly 22021, 703–222–3900	VA	9/20/93
Mr. Scott Shearin, Brian Center Health, 105 Clonce Street, Weber City 24290, 703–386–9444	VA	9/20/93
Mr. Rick Glanz, Laurelwood Care Center, 150 102nd Avenue SE., Bellevue 98004, 206–454–6166	WA	9/8/93
Mr. Rob Weinsten, Regency at Puyallup Rehab. Ct., 909 Meridian South, Puyallup 98371, 206–845–6631	WA	9/10/93
Ms. Loren Anderson, Lakeland Medical Center, P.O. Box 1002 Hwy. NN, Elkhorn 53121, 414–741–2000	WI	9/29/93
Total attestations: 91		

[FR Doc. 93–24950 Filed 10–8–93; 8:45 am]
BILLING CODE 4510–30–M

Occupational Safety and Health Administration

[Docket No. NRTL–2–91]

GTE TestMark Laboratories

AGENCY: Occuaptional Safety and Health Administration, Department of Labor.

ACTION: Additional comments on the GTE TestMark Laboratories' application for recognition as a nationally recognized testing laboratory; request for 30-day extension.

SUMMARY: This notice allows an additional 30-day extension in the reopening of the record for comments concerning whether GTE TestMark Laboratories can meet the independence requirement for recognition as a nationally recognized testing laboratory (NRTL) under 29 CFR 1910.7.

DATES: This extension allows additional comments to be submitted by no later than November 12, 1993.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Henry Woodcock, Acting Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

I. Background

A Notice of Application for the recognition of GTE TestMark Laboratories (TML) for recognition as a nationally recognized testing laboratory (NRTL) and Preliminary Finding was published in the **Federal Register**, July 8, 1992 (57 FR 30235). The American Council of Independent Laboratories, Inc. (ACIL), raised several issues concerning the independence of GTE TestMark and opposed the Laboratory's application for recognition (Exhibit 4–1). OSHA's request for additional comments on the independence issue prior to determining GTE TestMark Laboratories' eligibility for recognition as an NRTL was published in the **Federal Register**, July 13, 1993 (58 FR 37750).

In its response dated August 12, 1993, (Ex. 6–1), the ACIL requested additional time to more completely respond to OSHA's request for comments. OSHA agrees that the ACIL's request had merit and is, therefore, extending the comment period.

Copies of the TML application, the laboratory survey report, and all comments submitted in response to OSHA's request for additional comments on the independence issue published in the **Federal Register**, July 13, 1993 (58 FR 37750), and a copy of the **Federal Register**, July 13, 1993 (58 FR 37750), (Docket No. NRTL–2–91), are available for inspection and duplication at the Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

Authority And Signature

This document was prepared under the direction of David C. Zeigler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655).

Signed at Washington, DC this 5th day of October 1993.

David C. Zeigler,

Acting Assistant Secretary.

[FR Doc. 93–24878 Filed 10–8–93; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–424]

Vogtle Electric Generating Plant, Unit 1; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–68, issued to Georgia Power Company, acting for itself, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensees), for operation of the Vogtle Electric Generating Plant, Unit 1 (the facility) located in Burke County, Georgia.

The proposed amendment would be a one-time only revision to Technical Specification (TS) 4.6.1.2d, adding a footnote that would extend the 10 CFR part 50, Appendix J, Section III.D.3, Type C test interval, for the Unit 1 auxiliary component cooling water (ACCW) supply and return containment isolation valves, from 24 months to prior to entry to Mode 4 following the next outage requiring entry into Mode 5, but no later than November 1, 1994.

Georgia Power Company submits that the proposed amendment involves exigent circumstances in that the 24 month testing interval, as specified in 10 CFR part 50, Appendix J, Section III.D.3, and TS 4.6.1.2d, for the Unit 1 ACCW supply and return containment isolation valves, will expire on October 28, 1993, thus requiring the facility to be shut down and placed into Mode 5 prior to October 28, 1993, in order to perform the Type C test on the subject valves.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change is a one-time only extension of the Type C leakage test interval for the Unit 1 ACCW supply and return containment isolation valves. As such, it has no effect on the probability of any accident previously evaluated. Furthermore, based on the past leakage test history of these valves, there is reasonable assurance that extending the test interval to no later than November 1, 1994, (or the next forced outage that requires entry into Mode 5) will not adversely affect the ability of these valves to perform their isolation function. Therefore, the proposed change will not involve a significant increase in the consequences of any accident previously evaluated.

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change does not change the configuration or method of operation of any plant equipment, and no new failure modes have been defined for any plant system or component. Furthermore, no new limiting failure has been identified as a result of the proposed change.

3. The proposed change does not involve a significant reduction in a margin of safety. There continues to be reasonable assurance that the subject valves will remain capable of performing their isolation function. In addition, the proposed change avoids a plant shutdown solely for the purpose of performing Type C testing of these valves.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public

and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 12, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intevene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to David B. Matthews, Project Director, Project Directorate II–3: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troutman, Sanders, 600 Peachtree Street, Nations Bank Plaza, Suite 5200, Atlanta, Georgia 30308–2216, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated September 30, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room,

located at Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 5th day of October 1993.

For the Nuclear Regulatory Commission.

C.E. Carpenter, Jr.,

Acting Project Manager, Project Directorate II-3 Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93-24969 Filed 10-8-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-47]

U.S. Army Materials Technology Laboratory (the U.S. Army Materials Technology Laboratory Research Reactor); Order Terminating Amended Facility License

By application dated October 8, 1991, as supplemented on March 16 and March 31, 1992, the U.S. Army Materials Technology Laboratory (AMTL or the licensee) requested from the U.S. Nuclear Regulatory Commission (the Commission) authorization to dismantle and dispose of the component parts of the AMTL pool-type research reactor located in Watertown, Massachusetts. The letter of October 8, 1991, contained a request that, upon completion of decommissioning, authorization be given for termination of Amended Facility License No. R-65. A "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" was published in the **Federal Register** on February 24, 1992 (57 FR 6339). By Order dated June 3, 1992 (57 FR 24834), the Commission authorized dismantling of the facility and disposition of component parts as proposed in the decommissioning plan of the licensee. On June 23 and November 3, 1992, as supplemented on November 24, 1992, the licensee requested approval for changes to the decommissioning plan. These changes to the decommissioning plan were approved on July 16, 1992, and January 21, 1993. By letter dated March 30, 1993, as supplemented on May 24 and July 14, 1993, the licensee submitted the final survey report for decommissioning the AMTL research reactor.

This Order applies to the AMTL Reactor Building 100 and the reactor yard at Watertown. Building 97 at the AMTL is not covered by the license being terminated herein. Building 97 is covered by NRC License No. 20-01010-04 (Docket No. 030-04593), which is separately being considered for termination.

The reactor fuel has been removed from the core and shipped to a Department of Energy (DOE) facility. The reactor facility has been completely dismantled and all requirements pertaining to residual radioactivity, personnel and external radiation exposure, and fuel disposition have been met. Confirmatory radiological surveys verified that the facility met the recommended regulatory guidance for release of the facility for unrestricted use. Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission Order dated June 3, 1992, as supplemented on July 16, 1992, and January 21, 1993. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in title 10 of the Code of Federal Regulations, (10 CFR) Chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, on the basis of the application filed by the AMTL, and pursuant to Sections 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(f), Amended Facility License No. R-65 is terminated as of the date of this Order. In accordance with 10 CFR part 51, the Commission has determined that the issuance of this termination Order will have no significant impact. The environmental assessment was published in the **Federal Register** on October 4, 1993 (58 FR 51654).

For further details with respect to this action see (1) the application for termination of Amended Facility License No. R-65, dated October 8, 1991, as supplemented, (2) the Commission safety evaluation related to the termination of the license, (3) the environmental assessment, and (4) the "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License," published in the **Federal Register** on February 24, 1992 (57 FR 6339). Each of these items is available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Copies of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Operating Reactor Support.

Dated at Rockville, Maryland this 5th day of October 1993.

For The Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93-24971 Filed 10-8-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-148]

The University of Kansas, the University of Kansas Research Reactor; Order Terminating Facility License

By application dated December 17, 1990, the University of Kansas (UK or the licensee) requested from the U.S. Nuclear Regulatory Commission (the Commission) authorization to dismantle and dispose of the component parts of the UK research reactor located in Lawrence, Kansas. The letter of December 17, 1990, contained a request that, upon completion of decommissioning, authorization be given for termination of Facility License No. R-78. A "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License" was published in the **Federal Register** on May 9, 1991 (56 FR 16349). By Order dated September 19, 1991 (56 FR 49215), the Commission authorized dismantling of the facility and disposition of component parts as proposed in the decommissioning plan of the licensee. By letter dated January 4, 1993, the licensee submitted the final report for Decommissioning the Kansas University training reactor.

The reactor fuel has been removed from the core and shipped to a Department of Energy (DOE) facility. The reactor facility has been completely dismantled and all requirements pertaining to residual radioactivity, personnel and external radiation exposure, and fuel disposition have been met.

Confirmatory radiological surveys verified that the facility met the recommend regulatory guidance for release of the facility for unrestricted use. Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated September 19, 1991. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, on the basis of the application filed by the

UK and pursuant to sections 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, and in 10 CFR 50.82(f), Facility License No. R–78 is terminated as of the date of this Order. In accordance with 10 CFR part 51, the Commission has determined that the issuance of this termination order will have no significant impact. The environmental assessment was published in the **Federal Register** on October 4, 1993 (58 FR 51655).

For further details with respect to this action see (1) the application for termination of Facility License No. R–78, dated December 17, 1990, as supplemented on January 4, 1993, (2) the Commission's safety evaluation related to the termination of the license, (3) the environmental assessment, and (4) the "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License," published in the **Federal Register** on May 9, 1991 (56 FR 16349). Each of these items is available for public inspection at the Commission Public Document Room, 2120 L Street NW., Washington, DC 20555.

Copies of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Operating Reactor Support.

Dated at Rockville, Maryland this October 5, 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–24970 Filed 10–8–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the twenty-eighth meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting the Council will present its views and recommendations to the Pay Agent on locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting is open to the public.

DATES: October 28, 1993, at 9 a.m.

ADDRESSES: Office of Personnel Management, 1900 E Street NW., room 5A06A, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street NW., room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

Lorraine A. Green,

Deputy Director.

[FR Doc. 93–24847 Filed 10–8–93; 8:45 am]

BILLING CODE 6325–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, October 26 and 27, 1993, at the Madison Hotel, 15th & M Streets, Northwest, Washington, DC.

The Subcommittee on Hospital Inpatient Care will convene at 9 a.m. October 26, 1993, in Executive Chambers 1, 2 and 3. The Subcommittee on Hospital Outpatient and Other Facility Services will convene in Drawing Rooms III and IV, also at 9 a.m.

The Full Commission will convene at 1:45 p.m. on October 26, 1993, in Executive Chambers 1, 2 and 3, and on October 27, 1993, the meeting will begin at 8 a.m. in the same room.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 93–25027 Filed 10–8–93; 8:45 am]

BILLING CODE 6820–BW–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2663; Amdt.6]

Missouri; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective September 17, 1993, to include Barton County in the State of Missouri as a disaster area as a result of damages caused by severe storms and flooding beginning on June 10, 1993 and continuing.

All counties contiguous to the above-named primary county have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 15, 1993 and for economic injury the deadline is April 11, 1994.

The economic injury number for Missouri is 793300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 27, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–24870 Filed 10–8–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2670; Amdt. 5]

North Dakota; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective September 21, 1993, to establish the incident period for this disaster as beginning on June 22, 1993 and continuing through September 24, 1993 for all declared counties except Benson, Nelson, Ramsey, and Stutsman. The incident period for these counties is June 22, 1993 and continuing.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 15, 1993 and for economic injury the deadline is April 26, 1994.

The economic injury number for North Dakota is 795500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 27, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–24872 Filed 10–8–93; 8:45 am]

BILLING CODE 8025–01–M

Interest Rates

The interest rate on section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97–35) and the SBA share of immediate participation loans is 6⅞ percent for the fiscal quarter beginning October 1, 1993.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–4(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the October–December quarter of FY 94, this rate will be 5⅞ percent.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 93–24871 Filed 10–8–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Minot International Airport, Minot ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minot International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Ominibus Budget Reconciliation Act of 1990) (Public Law 101–508) part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 12, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. R. A. Schempp, City Manager of the City of Minot at the following address: City of Minot, 515 2nd Avenue Southwest, Minot, North Dakota 58701.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Minot under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Irene Porter, Manager, Federal Aviation Administration, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504, (701) 250–4385. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minot International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 22, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Minot, North Dakota was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 21, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: October, 1993

Proposed charge expiration date: October, 1998

Total estimated PFC revenue: $1,569,483

Brief description of proposed project(s):

Projects to Impose and Use PFC

1. Construct Vault and Standby Power Generator
2. Passenger Facility Charge Application Costs
3. Reconstruct West Terminal Apron—Phase I & II
4. Reconstruct Access Roads to West Terminal Area
5. Acquire Snow Removal Equipment—Runway Sweeper
6. Reconstruct West Terminal Building

Projects Only to Impose a PFC

7. Reconstruct and Expand Air Cargo Apron
8. Acquire Land
9. Acquire Snow Removal Equipment
10. Construct Parallel Taxiway for Runway 8/26
11. Extend and Strengthen Runway 8/26
12. Install Security Fence
13. Construct Hangar Taxiways
14. Construct Service Road to North Areas
15. Construct Compass Rose
16. Const. Service Rd to Air Carrier Apron and Cargo Apron
17. Prepare Airport Master Plan
18. Reconst. Rwy 13/31 and Install Porous Friction Course
19. Install Runway Surface Condition Detector System
20. Install Automated Weather Observing System (AWOS).

Class or classes of air carriers which the public agency has requested not to be required to collect PFCs: Unscheduled passenger/charter services: operating aircraft with 30 seats or less.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Minot.

Issued in Des Plaines, Illinois on October 4, 1993.

W. Robert Billingsley,

Manager, Airports Division, Great Lakes Region.

[FR Doc. 93–24955 Filed 10–8–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Transit Administration

Environmental Impact Statement on the Selection and Construction of a New High Capacity Transit Improvement in Clackamas and Multnomah counties, OR, and Clark County, WA

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA), Metro and C-TRAN hereby give notice that they intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) on a proposal to construct a new high capacity transit improvement in the combined Milwaukie and I–5 North corridor from Clackamas County, Oregon, through the Portland central business district to Clark County, Washington. The local cooperating lead agencies for the project will be Metro and C-Tran. The local joint lead agencies will ensure that the Environmental Impact Statement (EIS) also satisfies the requirements of the State of Washington Environmental Protection Act (SEPA) and serves as the EIS required by SEPA. The study will initially evaluate several high capacity transit alternatives, a Transportation System Management (TSM) alternative, a No-Action alternative and possibly new alternatives generated through the scoping process. Those alternatives that are determined to be the most promising will be evaluated within the EIS. Scoping for the initial study of the alternatives will be accomplished through correspondence with interested persons, organizations, and federal, state and local agencies and through three public meetings.

DATES: Comment Due Date: Written comments on the scope of alternatives and impacts to be considered should be sent to Metro by November 12, 1993. Scoping Meetings: Public scoping meetings will be held on Tuesday, October 26, 1993 at 3 p.m. and 7 p.m. in the Oregon Convention Center, and on Wednesday, October 27, 1993 at 7 p.m. at the Putnam High School Cafeteria, and on Thursday, October 28,

1993 at 7 p.m. in the Clark County Public Utility District Community Room. See **ADDRESSES** below.

ADDRESSES: Written comments on the project scope should be sent to Mr. Leon Skiles, Project Manager, Metro, 600 NE Grand, Portland, Oregon, 97232. Scoping meetings will be held at the following locations:

1. Tuesday, October 26, 1993—3 p.m. and 7 p.m., Oregon Convention Center, 777 NE. Martin Luther King Jr. Blvd., Portland, Oregon 97232.
2. Wednesday, October 27, 1993—7 p.m., Putnam High School, 4950 SE. Roethe Road, Milwaukie, Oregon.
3. Thursday, October 28, 1993—7 p.m., Clark County Public Utility District, 1200 Fort Vancouver Way, Vancouver, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Ebersole, Regional Administrator, Federal Transit Administration, 915 Second Avenue, Suite 3142, Seattle, Washington, 98104, (206) 220–7954, or Mr. Leon Skiles, Project Manager, Metro, 600 NE Grand, Portland, Oregon, 97232, (503) 797–1700.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA, Metro and C-Tran invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives that could be evaluated in a local screening process and subsequently in the EIS and in identifying any significant social, economic or environmental issues related to the alternatives. Staff will be present at the scoping meetings to describe the proposed scope of the study using maps and visual aids, a project work schedule, opportunities for citizen involvement, and an estimated budget. Members of the public and interested Federal, state, and local agencies are invited to comment on the proposed scope of work, alternatives to be assessed, impacts to be analyzed, and evaluation criteria to be used to arrive at a decision. Comments regarding the scope of the study may be made verbally at the public scoping meetings or in writing. See **DATES** and **ADDRESSES** sections above for locations and times.

II. Description of Study Area and Project Need

The study area is the travel shed from Oregon City, Oregon, through the Portland central business district into Clark County, Washington. The study area generally encompasses I–205 between Clackamas Town Center and Oregon City; McLoughlin Blvd. between the Portland CBD and Oregon City; I–5 North between the Portland CBD and 179th in Clark County; and SR–500 between I–5 and Vancouver Mall. High capacity transit service to the activity centers of Oregon City, Clackamas Town Center, Milwaukie and Portland, Oregon and Vancouver, 179th St. and Vancouver Mall in Washington will be evaluated. The study is intended to address traffic and air quality problems, land use goals and local transportation policies by improving transit service in an area that is experiencing significant population and employment growth.

III. Alternatives

The alternatives proposed for initial evaluation include: No-Action, which means no high capacity transit improvements would be built in the study area, and a variety of build alternatives, including expanded bus service, busways and light rail transit. The build alternatives include several termini and alignment options. Prior to initiation of the EIS, the study will perform an analysis on the alternatives in order to screen out all but the most promising alternatives. The EIS will be written on and analyze only the most promising alternatives.

IV. Probable Effects

FTA and the local cooperating agencies plan to evaluate in the EIS all significant social, economic, and environmental impacts of the alternatives that are determined to be the most promising following an extensive public involvement and local screening process. Among the primary issues that will be addressed in the EIS are the expected impact on transit ridership, the capital outlays needed to construct the project, and the financial impacts on the funding agencies. Environmental and social impacts proposed for analysis in the EIS include land use impacts, neighborhood impacts, traffic impacts, visual impacts, impacts on historical and cultural resources, air quality impacts, and noise and vibration impacts. Impacts on natural areas, rare and endangered species, water quality, ground water, and geologic forms will also be covered in the EIS. Measures to mitigate significant adverse impacts will be explored.

V. FTA Procedures

In accordance with the Federal Transit Act, as amended, and FTA policy, the Draft EIS will be prepared in conjunction with an Alternatives Analysis, and the Final EIS in conjunction with Preliminary Engineering. After its publication, the Draft EIS will be available for public and agency review and comment, and a public hearing will be held. On the basis of the Draft EIS and the comments received, Metro will select a locally preferred alternative and seek approval from FTA to continue with Preliminary Engineering and preparation of the Final EIS.

Issued on: October 5, 1993.

Terry Ebersole,

Regional Administrator.

[FR Doc. 93–24857 Filed 10–8–93; 8:45 am]

BILLING CODE 4910–57–U

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer Federally assisted land or facility.

SUMMARY: The Federal Transit Act, as amended (FT Act), permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the Santa Clara County Transit District intends to transfer real property located at the southeast corner of Highway 237 and Zanker Road, San Jose, CA.

EFFECTIVE DATE: Any Federal agency interested in acquiring the land or facility must notify the FTA San Francisco Regional Office of its interest, by November 12, 1993.

ADDRESSES: Interested parties should notify the Regional Office by writing Donna Turchie, Federal Transit Administration at 211 Main Street, Suite 1160, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Donna Turchie, in the San Francisco Regional Office, at 415/744–3115 or Frank Kelly, Office of Grants Management at 202/366–1647.

SUPPLEMENTARY INFORMATION:

Background

Section 12(k) of the FT Act, as amended, provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance determines that capital assets (including land) acquired, in whole or part, with such assistance are no longer needed for the purposes for which they were acquired, the Administrator may authorize the transfer of such assets to any public

body to be used for any public purpose with no further obligation to the Federal Government.

Section 12(k)(2) Determinations

The provision also provides that before the FTA may authorize such a transfer for a non-transit use, the FTA must first determine that:

(A) The asset being transferred will remain in public use for not less than 5 years after the date of the transfer;

(B) There are no purposes eligible for assistance under the FT Act for which the asset should be used;

(C) The overall benefit of allowing the transfer outweighs the Federal Government interest in liquidation and return of the Federal financial interest in the asset, after consideration of fair market value and other factors; and

(D) In any case in which the asset is a facility or land, there is no interest in acquiring the asset for Federal use.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of section 12(k)(2)(D). Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected land or facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing land or facility, FTA will make certain that the other requirements specified in section 12(k)(2) (A) through (C) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The property is vacant land, consisting of two adjacent parcels. Parcel 49630–1 has an easement with the City of San Jose for an existing underground sewer line on .077 acres. The unencumbered area of this parcel is .411 acres. Parcel 49641–1 is 2.73 acres of unencumbered property.

Issued on: October 5, 1993.

Portia L. Palmer,

Acting Regional Administrator.

[FR Doc. 93–24856 Filed 10–8–93; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2 sec. 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue NW., Washington, DC, on November 2 and 3, 1993, of the following debt management advisory committee:

Public Securities Association Treasury Borrowing Advisory Committee

The agenda for the meeting provides for a technical background briefing by Treasury staff on November 2, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. On November 3, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9 a.m. Eastern time on November 2 and will be open to the public. The remaining sessions on November 2 and the committee's reporting session on November 3 will be closed to the public pursuant to 5 U.S.C. App. 2 sec. 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 2 sec. 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. sec. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2 sec. 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. sec. 552b(c)(9)(A).

The Office of the Under Secretary for Domestic Finance is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. sec 552b.

Dated: October 5, 1993.

Frank N. Newman,

Under Secretary of the Treasury, Domestic Finance.

[FR Doc. 93–24917 Filed 10–8–93; 8:45 am]

BILLING CODE 4810–25–M

Fiscal Service

[Dept. Circ. 750, 1993 Rev., Supp. No. 4]

The Midwestern Indemnity Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 and 9308, Title 31, of the United States Code. Federal bond approving officers should annotate their reference copies of the Treasury Circular 570, 1993 Revision on page 35804 to reflect this addition:

The Midwestern Indemnity Company. Business address: 1700 Edison Drive, Milford, OH 45150. Underwriting Limitation [b]: $6,206,000. Surety Licenses [c]: AL, GA, IL, IN, IA, KS, MI, MN, MO, NE, NC, OH, PA, TN, VA, WV, WI. Incorporated: Ohio.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained form the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–6850.

Dated: September 30, 1993.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93–24875 Filed 10–8–93; 8:45 am]

BILLING CODE 4810–35–01

UNITED STATES INFORMATION AGENCY

Performance Review Board Members

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: This Notice is issued to revise the membership of the United States Information Agency (USIA) Performance Review Board.

DATES: Upon publication.

FOR FURTHER INFORMATION CONTACT:

Mr. John S. Welch (Co-Executive Secretary), Deputy Director, Office of Personnel, Bureau of Broadcasting, U.S. Information Agency, 330 Independence Avenue SW., Washington, DC 20547, Tel: (202) 619–7545,

or

Ms. Patricia H. Noble (Co-Executive Secretary), Chief, Domestic Personnel Division, Office of Personnel, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, Tel: (202) 619–4617.

SUPPLEMENTARY INFORMATION: In accordance with section 4314(c) (1) through (5) of the Civil Service Reform Act of 1978 (Pub. L. 95454), the following list supersedes the U.S. Information Agency Notice (57 FR 192, October 2, 1992)

Chairperson: Associate Director for Management Richard T. Stephens (Acting)

Deputy Chairperson: Associate Director for Broadcasting Joseph B. Bruns (Acting)

Career SES Members

Hattie P. Baldwin, Director, Office of Equal Employment Opportunity and Civil Rights

J. Richard Berman, Assistant Inspector General for Audits, Office of Inspector General

Janice H. Brambilla, Director, Office of Personnel, Bureau of Broadcasting

Richard J. Caldwell, Deputy for Telecommunications, Office of Engineering and Technical Operations, Bureau of Broadcasting

Edward J. DeFontaine, Director, Broadcasting Operations, Bureau of Broadcasting

R. Wallace Stuart, Deputy General Counsel, Office of the General Counsel

Alternate Career SES Members

William K. Jones, Director, Washington Relocation Project Staff

Earl Klitenic, Senior Advisor to the Associate Director for Broadcasting.

This supersedes the previous U.S. Information Agency Notice (57 FR 192 October 2, 1992)

Dated: October 5, 1993.

Richard Stephens,

Deputy Associate Director for Management, U.S. Information Agency.

[FR Doc. 93–24946 Filed 10–8–93; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Application for Amounts Due Estates of Persons Entitled to Benefits, VA Form 21–609

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer,Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by November 12, 1993.

Dated: September 30, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Application for Amounts Due Estates of Persons Entitled to Benefits, VA Form 21–609
2. The form is used to gather the necessary information to determine who is the proper payee of certain accrued benefits due the veteran at the date of his or her death. The information is used by VA to determine eligibility.
3. Individuals or households
4. 375 hours.
5. 30 minutes
6. On occasion
7. 750 respondents

[FR Doc. 93–24911 Filed 10–8–93; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Statement of Disappearance, VA Form 21–1775

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by November 12, 1993.

Dated: September 30, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Statement of Disappearance, VA Form 21–1775
2. The form is used to gather the necessary information from individuals to determine if a decision of formal presumption of death can be made for benefits payment purposes when a veteran has been missing for seven years. The information is used by VA to determine death benefit entitlement.
3. Individuals or households
4. 5,000 hours
5. 2 hours and 45 minutes

6. On occasion
7. 2,000 respondents.

[FR Doc. 93–24912 Filed 10–8–93; 8:45 am]
BILLING CODE 8320–01–M

Information Collection Under OMB Review: VA Acquisition Regulation (VAAR) (48 CFR, Chapter 8, Parts 813, 814, and 815)

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) the title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Office of Information Resources Management (723), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before November 12, 1993.

Dated: September 30, 1993.

By direction of the Secretary.

B. Michael Berger,
Director, Records Management Service.

Revision

1. VA Acquisition regulation (VAAR) (48 CFR, chapter 8, parts 813, 814, and 815)
2. Acquisition information is collected by VA purchasing and contracting personnel for the purpose of issuing purchase orders and awarding contracts for supplies, services, and construction necessary to the operations of VA offices and health care facilities.
3. Individuals or households—Businesses or other for profit—Small businesses or organizations—Non-profit institutions.
4. 981,445 hours.
5. 2.3 hours.
6. As offers are solicited.
7. 426,715 respondents.

[FR Doc. 93–24913 Filed 10–8–93; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 195
Tuesday, October 12, 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 ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), U.S.C. 552b:

DATE AND TIME: October 13, 1993, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary. Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 987th Meeting—October 13, 1993, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 3623–097, Youghiogheny Hydroelectric Authority
CAH–2.
Project No. 10729–003, Murphy Hydro Company, Inc.
CAH–3.
Project No. 6287–007, Rainsong Company
CAH–4.
Project Nos. 10822–001 and 10823–001, Summit Hydropower
CAH–5.
Project No. 11221–003, Tropicana Limited Partnership
CAH–6.
Project No. 11323–001, Blue Diamond Associates
CAH–7.
Omitted
CAH–8.
Project Nos. 2523–004, 005 and 006, Wisconsin Electric Power Company
CAH–9.
Project No. 3258–002, Joseph M. Keating

Consent Agenda—Electric

CAE–1.
Docket No. FA91–54–001, Central Vermont Public Service Corporation
CAE–2.
Docket Nos. ER93–523–000 and ER93–533–000, Western Resources, Inc. and Kansas Gas & Electric Company
CAE–3.
Docket No. EL92–36–000, Arkansas Power & Light Company, System Energy Resources, Inc., New Orleans Public Service, Inc., Louisiana Power & Light Company, Mississippi Power & Light Company and Entergy Power, Inc.
CAE–4.
Docket Nos. EL93–21–000, 001, EL93–25–001 and EL93–38–000, Vermont Yankee Nuclear Power Corporation Docket Nos. ER90–525–000 and ER90–526–000, New England Power Company
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Docket No. EC93–6–001, Cincinnati Gas & Electric Company and PSI Energy, Inc.
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Docket No. ER92–517–002, Southern Company Services, Inc.
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Lois D. Cashell,

Secretary.

[FR Doc. 93–25054 Filed 10–7–93; 11:20 am]

BILLING CODE 6717–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 11:00 a.m., October 6, 1993.

PLACE: 4th Floor, Executive Director's Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Closed.

MATTER CONSIDERED: Selection of Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 6, 1993.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 93–25031 Filed 10–6–93; 4:57 pm]

BILLING CODE 6760–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., October 18, 1993.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the September 20, 1993, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick audit report: "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Annuity Operations at the Metropolitan Life Insurance Company and the Federal Retirement Thrift Investment Board."

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 7, 1993.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 93–25153 Filed 10–7–93; 4:02 pm]

BILLING CODE 6760–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–93–32]

TIME AND DATE: 3:30 p.m., October 18, 1993.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 701–TA–312 (Remand) (Softwood Lumber from Canada)—briefing and vote.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: October 6, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–25061 Filed 10–7–93; 11:21 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME & DATE: 10:00 a.m., Tuesday, October 19, 1993.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and 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:

Finance Docket No. 30000 (Sub-No. 16), *St. Louis Southwestern Railway Company—Trackage Rights Over Missouri Pacific Railroad Company—Kansas City to St. Louis*

Finance Docket No. 31024, *The Durango & Silverton Narrow Gauge Railroad Company—Petition for Declaratory Order or Exemption*

Ex Parte No. MC–216, *Jurisdiction Over Motor Finance Transactions*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Public Affairs, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25099 Filed 10–7–93; 2:42 pm]

BILLING CODE 7503–01–M

Corrections

Federal Register
Vol. 58, No. 195
Tuesday, October 12, 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.

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 933

[No. 93-75]

Members of the Federal Home Loan Banks

Correction

In rule document 93-23791 beginning on page 50836 in the issue of Wednesday, September 29, 1993, in the third column, under **SUPPLEMENTARY INFORMATION**, in the seventh line, "§ § 932.2" should read "§ § 933.2".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ANE-25]

Alteration of VOR Federal Airway V-123; NY

Correction

In rule document 93-21684 beginning on page 47039 in the issue of Tuesday, September 7, 1993, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 93-11]

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Docket No. R-0802]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064-AB22

Risk-Based Capital Standards; Interest Rate Risk

Correction

In proposed rule document 93-22149 beginning on page 48206 in the issue of Tuesday, September 14, 1993, make the following corrections:

1. On page 48208, in the third column, in the first line, "reply" should read "rely".

2. On page 48210, in the third column, in the first full paragraph, in the fourth line from the bottom, "(0.300.03)." should read "(0.30 × 0.03)."

3. On the same page, in the same column, in the same paragraph, in the last line, "(0.300.10)." should read "(0.30 × 0.10)."

4. On page 48211, in the second column, in the first partial paragraph, in the third line from the bottom, insert "only" after "rates".

5. On page 48215, in the first column, in the third full paragraph, in the second line, "national" should read "notional".

6. On page 48216, in the third column, in the third full paragraph, in the fifth line from the bottom, insert "change" between "conditions" and the comma.

7. On the same page, in the same column, in the same paragraph, in the second and third lines from the bottom, remove "biennial review of risk-based capital required".

8. On page 48218, in the second column, in the first full paragraph, in the first line, "measure" should read "measurement".

9. On page 48222, in the second column, in footnote 13, in the fifth line, "– (.01 Total Assets)" should read "– (.01 × Total Assets)".

10. On page 48223, in the first column, in the first full paragraph, in the sixth line from the bottom, "is" should read "if".

11. On the same page, in the second column, in the second full paragraph, in the fourth line from the bottom, "would" should read "could".

12. On page 48225, in the third column, in the fourth paragraph, in the third line from the bottom, insert "any" after "on".

13. On page 48226, in the first column, in the first bold, all-capital heading, "Comptroller" was misspelled.

Appendix B to Part 3 [Corrected]

14. On pages 48227 and 48234, Tables 1 and 3 were printed out of sequence. Tables 1 and 3 should appear in reverse order.

15. On page 48231, in the first column, under the heading *Section 8. Calculation of Excess Measured Exposure*, in paragraph (a), in the last line, remove "9".

Appendix A to Part 208 [Corrected]

16. On page 48233, in the third column of text, in the first line, "(Assets Risk Weights)" should read "(Assets × Risk Weights)".

17. On the same page, in the same column, in the second line, "(Liabilities Risk Weights)" should read "(Liabilities × Risk Weights)".

18. On the same page, in the same column, in the third line, "Sheet Positions Risk Weight)" should read "Sheet Positions × Risk Weight)".

19. On page 48235, in the third column, under the heading *F. Example of the Interest Rate Risk Measure*, in the second line, "of" should read "by".

Appendix C to Subpart A of Part 325 [Corrected]

20. On page 48240, in the first column, under the heading *D. Calculation of Excess Measured Exposure*, in paragraph 1., in the sixth line, "(.01 Total" should read "(.01 × Total".

BILLING CODE 1505-01-D

federal register

Tuesday
October 12, 1993

Part II

Department of Health and Human Services

Centers for Disease Control and Prevention

Draft Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Facilities, Second Edition; Notice of Comment Period

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Facilities, Second Edition; Notice of Comment Period

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice is a request for comment and review of the draft document entitled Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Facilities, Second Edition prepared by the Centers for Disease Control and Prevention.

DATES: To ensure consideration, written comments on this draft document must be received on or before December 13, 1993.

ADDRESSES: Comments on the content of this notice should be in writing and addressed to Centers for Disease Control and Prevention, Attention: Guidelines Work Group, Mail Stop E07, 1600 Clifton Road, NE., Atlanta, Georgia 30333. To facilitate review please categorize your comments as follows: (1) Risk Assessment, (2) Administrative Controls, (3) Engineering Controls, (4) Respiratory Protection, (5) Education and Training, (6) HCW Counseling, Screening, and Evaluation, (7) Cost and Feasibility of Implementation, and (8) Other.

FOR FURTHER INFORMATION CONTACT: Carmine Bozzi, (404) 639–8027.

SUPPLEMENTARY INFORMATION: This document updates and replaces the previously published CDC guidelines for the prevention of tuberculosis (TB) transmission in health-care facilities to emphasize the importance of (1) the hierarchy of control measures including administrative and engineering controls, and personal respiratory protection, (2) health-care facility risk assessment and development of a written TB control plan, (3) early identification and management of persons with TB, (4) purified protein derivative (PPD) skin testing programs, and (5) health-care worker (HCW) education.

Transmission of TB is a recognized risk in health-care facilities. Transmission is most likely to occur from patients with unrecognized pulmonary or laryngeal TB who are not on effective antituberculosis therapy and have not been placed in TB isolation. Several recent TB outbreaks in health-care facilities, including outbreaks of multidrug-resistant TB (MDR–TB), have heightened concern about nosocomial transmission. Increases in TB in many areas are related to the high risk of TB among immunosuppressed persons, particularly those infected with the human immunodeficiency virus (HIV). Transmission of Mycobacterium tuberculosis infection to persons with HIV infection is of particular concern because they are at high risk of developing active TB if infected. Thus, health-care facilities should be particularly alert to the need for preventing TB transmission in settings in which persons with HIV infection receive care or work.

An effective tuberculosis infection control program requires early detection, isolation, and treatment of persons with active infectious TB. The primary emphasis of the TB infection control plan should be achieving these three goals by the application of a hierarchy of control measures, including (1) the use of administrative measures to reduce the risk of exposure to persons with infectious TB, (2) the use of engineering controls to prevent the spread and reduce the concentration of infectious droplet nuclei in the air, and (3) the use of personal respiratory protective equipment in areas where there is still a risk of exposure to M. tuberculosis, such as TB isolation rooms where persons with infectious TB are isolated.

Although completely eliminating the risk of TB transmission in all health-care facilities may be impossible, adherence to these guidelines should greatly reduce the risk to persons in these settings.

Dated: October 5, 1993.

Walter R. Dowdle,

Acting Director, Centers for Disease Control and Prevention (CDC).

Appendix—Guidelines for Preventing the Transmission of Tuberculosis in Health-Care Facilities, Second Edition

October 1993 Draft Prepared by Department of Health and Human Services, Public Health Service (PHS), Centers for Disease Control and Prevention (CDC), Guidelines Work Group, Atlanta, Georgia 30333.

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Glossary
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Executive Summary

This document updates and replaces the previously published CDC guidelines for the prevention of tuberculosis (TB) transmission in health-care facilities 1—CDC1982, 2—CDC1990d) to emphasize the importance of (1) the hierarchy of control measures including administrative and engineering controls, and personal respiratory protection, (2) health-care facility risk assessment and development of a written TB control plan, (3) early detection and management of persons with TB, (4) purified protein derivative (PPD) skin testing programs, and (5) health-care worker (HCW) education.

Transmission of TB is a recognized risk in health-care facilities. Transmission is most likely to occur from patients with unrecognized pulmonary or laryngeal TB who are not on effective antituberculosis therapy and have not been placed in TB isolation. Several recent TB outbreaks in health-care facilities, including outbreaks of multidrug-resistant TB (MDR–TB), have heightened concern about nosocomial transmission. Increases in TB in many areas are related to the high risk of TB among immunosuppressed persons, particularly those infected with the human immunodeficiency virus (HIV). Transmission of Mycobacterium tuberculosis infection to persons with HIV infection is of particular concern because they are at high risk of developing active TB if infected. Thus, health-care facilities should be particularly alert to the need for preventing TB transmission in settings in which persons with HIV infection receive care or work.

An effective TB infection control program requires early detection, isolation, and treatment of persons with active TB. The primary emphasis of the TB infection control plan should be achieving these three goals by the application of a hierarchy of control measures, including (1) the use of administrative measures to reduce the risk of exposure to persons with infectious TB, (2) the use of engineering controls to prevent the spread and reduce the concentration of infectious droplet nuclei, and (3) the use of personal respiratory protective equipment in areas where there is still a risk of exposure to M. tuberculosis, such as TB isolation rooms.

Implementation of an optimum TB control program requires risk assessment; early identification and isolation of infectious TB patients; effective engineering controls; an appropriate respiratory protection program; and HCW TB education, counseling, screening, and evaluation.

Although completely eliminating the risk of TB transmission in all health-care facilities may be impossible, adherence to these guidelines should greatly reduce the risk to persons in these settings.

I. Introduction

A. Purpose of Document

The purpose of this document is to review the mode and risk of tuberculosis (TB) transmission in health-care facilities and to make recommendations for reducing the risk of transmission to health-care workers (HCWs), patients, volunteers, visitors, and other persons in these settings. The document also may serve as a useful resource for educating HCWs about TB.

These recommendations update and replace all previously published CDC recommendations for TB infection control in health-care facilities (1—CDC1982, 2—CDC1990d). The recommendations in this guideline are applicable to all settings in which health care is provided. In this document, the term "health-care facility" includes hospitals, ambulatory care facilities, outpatient and dental clinics, home health-care settings, emergency medical services and other facilities or residential settings providing medical care including substance abuse treatment settings and medical care areas of correctional facilities.

The term HCW refers to all paid and unpaid persons working in a health-care setting who have the potential for exposure to M. tuberculosis, including, but not limited to, physicians; nurses; aides; technicians; laboratory, morgue, funeral home, and dental workers; emergency medical responders; students; part time personnel; temporary staff not employed by the health-care facility; and persons not directly involved in patient care but who have potential occupational exposure to M. tuberculosis (e.g., dietary, housekeeping, maintenance, clerical and janitorial staff, and volunteers).

While the purpose of this document is to make recommendations for reducing the risk of transmission of tuberculosis to health-care workers, patients, and others in health-care facilities, the process of implementing any

recommendation must include provisions to safeguard the confidentiality and civil rights of individuals with TB under applicable state and federal laws.

B. Epidemiology, Transmission, and Pathogenesis of TB

TB is not evenly distributed throughout all segments of the U.S. population. Some subgroups or individuals have a higher risk of TB either because they are more likely than the general population to have been exposed to and infected by M. tuberculosis or because they are more likely to progress to active TB once infected (3—CDC1990b). In some cases, both of these factors may be present. Groups known to have a higher prevalence of TB infection include medically underserved populations (including some African-Americans, Hispanics, Asians and Pacific Islanders, American Indians and Alaskan Natives), homeless persons, current or past prison inmates, alcoholics, injecting drug users, the elderly, foreign-born persons from areas of the world with a high prevalence of TB (e.g., Asia, Africa, the Caribbean, and Latin America), and contacts to persons with active TB. Groups with a higher risk of progression from latent TB infection to active disease include persons with certain medical conditions, including HIV infection, silicosis, status post gastrectomy or jejuno-ileal bypass surgery, being ≥10 below ideal body weight, chronic renal failure, diabetes mellitus, immunosuppression due to receipt of high-dose corticosteroid or other immunosuppressive therapy, and some malignancies; persons who have been recently infected (within the past two years); young children (≤5 years old); and persons with fibrotic lesions on chest radiograph (3—CDC1990b).

M. tuberculosis is carried in airborne particles, known as droplet nuclei, that can be generated when persons with pulmonary or laryngeal TB sneeze, cough, speak, or sing (4—ATS/CDC1990). The particles are estimated to be approximately 1–5 microns in size, and normal air currents keep them airborne and can spread them throughout a room or building (5—Wells1955). Infection occurs when a susceptible person inhales droplet nuclei containing M. tuberculosis, and bacilli are able to traverse the mouth or nasal passages, upper respiratory tract, and bronchi to reach the alveoli of the lungs. Once in the alveoli, the organisms are taken up by alveolar macrophages and spread throughout the body. Usually within 2 to 10 weeks after initial infection with M. tuberculosis, the immune response limits further multiplication and spread of the tubercle bacilli; however, some of the bacilli remain dormant and viable for many years. This is known as latent TB infection. Persons with latent TB infection usually have a positive purified protein derivative (PPD) skin test, but they have no symptoms of active TB, and they are not infectious. In general, persons with latent TB infection have approximately a 10% risk during their lifetime for the development of active TB. The risk is greatest in the first 2 years after infection, but some risk persists for decades.

Persons with immunocompromising conditions have a greater risk for the progression of latent TB infection to active disease. HIV infection is the strongest known risk factor yet identified for the progression from latent TB infection to active TB disease. Persons with latent TB infection who become infected with HIV have approximately an 8–10% risk per year for the development of active TB (6—Selwyn1989). Persons who are infected with HIV and become newly infected with TB have an even greater risk for the development of active TB (7—DiPerri1989, 8—Daley1992, 9—Edlin1992, 10—Dooley1992a).

The probability that a susceptible person will become infected with M. tuberculosis depends primarily upon the concentration of infectious droplet nuclei in the air and the duration of exposure. Characteristics of the TB patient that enhance transmission include: (1) Disease in the lungs, airways, or larynx, (2) presence of cough or other forceful expiratory measures, (3) presence of acid-fast bacilli (AFB) in the sputum, (4) failure of the patient to cover the mouth and nose when coughing, (5) presence of cavitation on chest radiograph, (6) short duration of adequate chemotherapy, and (7) administration of procedures that can induce coughing or cause aerosolization of M. tuberculosis (e.g., sputum induction). Environmental factors that enhance the likelihood of transmission include: (1) Exposure of susceptible persons to an infectious person in relatively small, enclosed spaces, (2) inadequate local or general ventilation that results in insufficient dilution and/or removal of infectious droplet nuclei, and (3) recirculation of air containing infectious droplet nuclei.

C. Risk of Nosocomial TB Transmission

TB transmission is a recognized risk in health-care facilities (11—Barrett-Connor1979, 12—Brennen1988, 13—Goldman1988, 14—Catanzaro1982, 15—Ehrenkranz1972, 16—Haley1989, 17—Hutton1990, 18—Kantor1988, 19—Lundgren1987). The magnitude of the risk varies considerably by type of health-care facility, prevalence of TB in the community, patient population served, job category, area of the health-care facility in which a person works, and the effectiveness of TB infection control interventions. The risk may be higher in areas where patients with TB are provided care before diagnosis and initiation of TB isolation precautions (e.g., clinic waiting areas and emergency rooms) or where diagnostic or treatment procedures that stimulate coughing are performed. Nosocomial transmission of TB has been associated with close contact with infectious patients or HCWs, and during procedures such as bronchoscopy (14—Catanzaro1982), endotracheal intubation and suctioning (15—Haley1989), open abscess irrigation (17—Hutton1990), and autopsy (18—Kantor1988, 19—Lundgren1987). Sputum induction and aerosol treatments that induce cough may also increase the potential for TB transmission (20—CDC1989a, 21—Beck-Sagué1992). Health-care-facility personnel should be particularly alert to the need for preventing TB transmission in health-care facilities in which immunocompromised persons, such as persons with HIV infection, receive care and/or work, especially if cough-inducing procedures, such as sputum induction and aerosolized pentamidine treatments, are being performed.

Several TB outbreaks in health-care facilities have been reported during the past several years (22—CDC1990a, 23—CDC1991, 9—Edlin1992, 24—Pearson1992, 21—Beck-Sagué1992, 25—Dooley1992, 26—CDCUnpub). Many of these outbreaks involved transmission of multidrug-resistant (MDR) strains of M. tuberculosis to both patients and HCWs. Most of the patients and some of the HCWs were HIV-infected persons in whom new infection progressed rapidly to active disease. Mortality associated with those outbreaks was very high (range 43% to 93%). Furthermore, the time between diagnosis and death was very short, with the median interval ranging from 4–16 weeks. Factors contributing to these outbreaks included delayed diagnosis of patients with TB, delayed recognition of drug resistance, delayed initiation of effective therapy resulting in prolonged infectiousness, delayed initiation and inadequate duration of TB isolation, inadequate ventilation in TB isolation rooms, lapses in TB isolation practices, and inadequate precautions for cough-inducing procedures. There is evidence

from three of the facilities that MDR–TB transmission decreased significantly or ceased in areas where measures similar to those in the previously published CDC guidelines were implemented (2—CDC1990d, 27—Wenger1992, 28—Otten1992, 29—Maloney1992, 30—Stroud1993). Since several interventions were implemented simultaneously, it cannot be determined which played the most important role in reducing transmission.

D. Fundamentals of TB Infection Control

An effective TB control program requires early detection, isolation, and treatment of persons with active TB. The primary emphasis of the TB infection control plan should be achieving these three goals. In all health-care facilities, particularly those in which persons who are at high risk for TB work or receive care, policies and procedures for TB control should be developed, periodically reviewed, and evaluated for effectiveness to determine the actions necessary to minimize the risk of TB transmission.

The TB control program should be based on a hierarchy of control measures. The first and most important level of the hierarchy is the use of administrative measures to reduce the risk of exposure to persons with infectious TB. This includes developing and implementing effective written policies and protocols to ensure the rapid detection, isolation, diagnostic evaluation, and treatment of persons likely to have TB, as well as implementing effective work practices by persons working in the health-care facility.

The second level of the hierarchy is the use of engineering controls to prevent the spread and reduce the concentration of infectious droplet nuclei. This includes (1) Direct source control using local exhaust ventilation, (2) controlling direction of air flow to prevent contamination of air in areas adjacent to the infectious source, (3) dilution and removal of contaminated air via general ventilation, and (4) air cleaning via air filtration or ultraviolet germicidal irradiation (UVGI).

The first two approaches minimize the number of areas in the health-care facility where exposure to infectious TB may occur, and reduce, but do not eliminate the risk in those few areas (e.g., TB isolation rooms and treatment rooms where cough-inducing procedures are performed) where exposure may still occur. Because persons entering isolation and treatment rooms may be exposed to M. tuberculosis, the third level of the hierarchy is the use of personal respiratory protective equipment in these and a few other situations of probable relatively higher risk.

Specific measures to reduce the risk of TB transmission include the following:

- Assigning supervisory responsibility for the design, implementation, and maintenance of the TB infection control program to specific persons in the health-care facility (Section II.A).
- Conducting a risk assessment to evaluate the risk of TB transmission in all parts of the health-care facility, developing a written TB control program based on the risk assessment, and periodically repeating the risk assessment to evaluate the effectiveness of the TB infection control program (Section II.B).
- Developing, implementing, and enforcing policies and protocols to ensure early detection of patients who may have infectious TB (Section II.C, Supplement 1).
- Providing prompt triage and appropriate management of patients who may have infectious TB in the outpatient setting (Section II.D).
- Promptly initiating and maintaining TB isolation, diagnostic evaluation, and treatment for persons who may have infectious TB and who are admitted to the inpatient setting (Section II.E).
- Developing, installing, maintaining, and evaluating ventilation and other engineering controls to reduce the potential for airborne exposure to M. tuberculosis (Section II.F, Supplement 3).
- Developing, implementing, maintaining, and evaluating a respiratory protection program (Section II.G, Supplement 4).
- Using appropriate precautions for cough-inducing procedures (Section II.H, Supplement 3).
- Educating and training HCWs about TB, effective methods for prevention of TB transmission, and the benefits of medical screening programs (Section II.I).
- Developing and implementing a program for routine periodic screening of HCWs for active TB and TB infection (Section II.J, Supplement 2).
- Promptly evaluating possible episodes of transmission of TB in health-care facilities, including HCW PPD skin test conversions, clusters of cases in HCWs or patients, and contacts of TB patients who were not promptly detected and isolated (Section II.K).
- Coordinating activities with the local public health department, emphasizing reporting, adequate discharge follow-up, and ensuring continuation and completion of therapy (Section II.L).

II. Recommendations

A. Assignment of Responsibility

- Supervisory responsibility for the TB Control Program should be assigned to designated persons with expertise in infection control, occupational health, and engineering.

B. Risk Assessment, Development of the TB Control Plan, and Periodic Reassessment

1. *Risk assessment*—a. *General.* TB control measures for each health-care facility should be based on a careful assessment of the risk of TB transmission in that setting. Therefore, the first step in developing the TB control program should be conducting an initial risk assessment (Figure 1). The purpose of this assessment is to evaluate the risk of TB transmission in each area and occupational group in the facility so that appropriate infection control interventions can be developed based on actual risk.[1]

- The risk assessment should be conducted by a group of qualified personnel which may include hospital epidemiologists, infectious disease specialists, pulmonary disease specialists, infection control practitioners, health-care administrators, occupational health personnel, engineers, HCWs, and local public health authorities.
- The risk assessment should be done for the facility as a whole and for individual areas of the institution (e.g., medical, TB, pulmonary, or HIV wards; HIV, infectious disease or pulmonary clinics; emergency departments or areas where TB patients may receive care or where cough-inducing procedures are performed, etc.). In addition, risk assessments should be done for individual groups of HCWs that work throughout the institution (e.g., respiratory therapists, bronchoscopists, environmental services, dietary, maintenance, housestaff by specialty, etc.).
- The elements of a risk assessment are summarized in Table 1. Classification of risk as high, intermediate or low in a specific area and for a specific occupational category should be based on (1) the number of infectious TB patients admitted to the

[1] Regardless of risk level, the management of patients with known or suspected infectious TB will not vary. However, the index of suspicion for infectious TB among patients, the frequency of HCW PPD skin testing, the number of TB isolation rooms, and other factors will vary by whether the risk of TB transmission in the facility, area, or occupational group is high, intermediate, or low.

area or ward, or the estimated number of infectious TB patients to whom HCWs in an occupational category may be exposed, and (2) on the results of analysis of HCW PPD test conversions and possible patient-to-patient TB transmission (Figure 1).

• All TB infection control programs should include periodic PPD testing and reassessment of risk. The frequency of repeat skin testing and risk assessment should be selected on the basis of the most recent risk assessment (Figure 1):

• "Low risk" areas or groups are those in which (1) the PPD test conversion rate is not greater than in areas or groups without occupational exposure TB patients or than previous rates in the same area or group, (2) there are no clusters of PPD test conversions, (3) there is no evidence of patient-to-patient transmission, and (4) (in the case of an area) there are <6 TB patients hospitalized per year.

• "Intermediate risk" areas or groups are those in which (1) the PPD test conversion rate is not greater than in areas without occupational exposure to TB patients or than previous rates in the same area or group, (2) there are no clusters of PPD conversions, (3) there is no evidence of patient-to-patient transmission, and (4) there are ≥6 TB patients hospitalized per year.

(**Note:** Even if there is no evidence of M. tuberculosis transmission, areas or groups encountering ≥6 TB patients per year still have a potential for transmission and should be classified as "intermediate risk").

• "High risk" areas or groups are those in which (1) the PPD test conversion rate is significantly greater than areas without occupational exposure to TB patients or than previous rates in the same area *or* group, *or* (2) there is a cluster of PPD test conversions, *or* (3) there is other evidence of patient-to-patient or patient-to-HCW transmission of M. tuberculosis.

• If no data or insufficient data for determination of risk have been collected on PPD test conversions among HCWs, the number of TB patients who have received care in that area, or from an occupational group, these data should be compiled, analyzed, and reviewed expeditiously. Until such data are analyzed and found to warrant a lesser risk rating, all acute care areas and occupational groups likely to encounter TB patients or be exposed to M. tuberculosis should be considered high risk.

b. *Case surveillance.*

• Data on the number of active TB cases among patients and HCWs in the facility should be systematically collected, reviewed, and used to estimate the number of isolation rooms needed, recognize clusters of nosocomial transmission, and assess the level of potential occupational risk. Information regarding the number of TB patients by specific area can be obtained by review of laboratory surveillance data on specimens positive for AFB smears and/or M. tuberculosis cultures.

• Drug-susceptibility characteristics of M. tuberculosis isolates (i.e., the antituberculous agents to which each isolate is susceptible and those to which it is resistant) from TB patients seen in the facility should be reviewed to identify the frequency and patterns of drug-resistance. This information may indicate a need to modify the initial treatment regimen or may suggest evidence of nosocomial transmission or increased occupational risk.

c. *Analysis of HCW PPD test screening data.*

• In addition to being recorded in individual HCW's employee health records, results of PPD testing should also be recorded in a retrievable aggregate data base of all HCW PPD test results. Identifying information should be handled confidentially. PPD test conversion rates should be calculated at appropriate intervals to estimate the risk of PPD test conversion for each area in the facility and for each specific occupational group not assigned to a specific area. In order to calculate PPD test conversion rates, it is necessary to know the total number of PPD-negative persons working in each area or group (denominator) and the number of PPD test conversions among HCWs in each area or group (numerator).

• PPD test conversion rates for each area should be compared to rates in areas without occupational exposure to M. tuberculosis and to previous rates in the same area to identify areas where the risk of occupational PPD test conversion may be increased. When comparing conversion rates by area, a low number of HCWs in a specific area may result in a greatly increased rate of conversion for that area, although the risk may not actually be meaningfully higher than for other areas. Testing for statistical significance (e.g., Fishers exact test or Chi square) may assist interpretation. However, lack of statistical significance may not rule out a problem because, if the number of HCWs tested is low, there may not be adequate statistical power to detect a significant difference. Thus, some interpretation of individual situations is indicated.

• Any time a cluster of PPD test conversions is noted, further evaluation is indicated (Section II.K.1). A cluster is defined as PPD test conversions in ≥2 persons in one area, or in a single occupational group that works in multiple areas (e.g., respiratory therapy, dietary, etc.), over a 3-month time period.

• The frequency and comprehensiveness of the HCW PPD testing program should be evaluated periodically to assure that all HCWs are being included in the program and tested at appropriate intervals. For surveillance purposes, it may be advantageous to stagger the testing of HCWs in a given area or occupational group, since this may lead to earlier detection of transmission (Section II.J.3).

d. *Review of TB patient medical records.*

• The medical records of a sample of consecutive TB patients admitted to the facility should be reviewed periodically to evaluate infection control parameters (Table 1). Parameters to examine include the intervals from date of admission until TB was suspected, specimens for AFB smears were ordered, collected, tests performed, and results reported. Adequacy of TB treatment regimens should also be evaluated.

• Medical record reviews should also note previous admissions before onset of TB. Patient-to-patient transmission may be suspected if active TB occurs in a patient with a prior hospitalization during which exposure to another TB patient occurred, or if ≥2 patients with a characteristic drug-susceptibility or DNA fingerprint pattern are detected.

• Data from the case review should be used to determine if there is a need to modify: (1) Protocols for detecting and isolating patients who may have infectious TB, (2) laboratory procedures, (3) administrative policies and practices, or (4) protocols for patient management.

e. *Observation of infection control practices.*

• Assessment of adherence to the policies of the TB control program should be part of the evaluation process. This assessment should be performed on a regular basis and whenever there is an increase in HCW PPD test conversions or number of TB patients. Areas at high risk for TB transmission should be monitored more frequently. The review of patient records discussed above provides information on HCW adherence to a portion of the policies. In addition, observation of work practices related to TB isolation should be done to determine if employers are enforcing and HCWs are adhering to the policies and enforcing patient adherence. Whenever poor adherence to policies is recognized, the situation should be evaluated to determine if

problems exist that interfere with adherence to procedures, and appropriate education and other corrective action should be implemented.

f. *Engineering evaluation.*

• Engineering measures should be evaluated and monitored according to the appropriate TB control protocol schedule (Section II.B.2, Supplement 3). Data from the most recent evaluation and from review of maintenance procedures and logs should be carefully reviewed as a part of the risk assessment.

2. *Development of the TB Infection Control Plan.*

• Based on the risk assessment, a written TB infection control plan should be developed and implemented for each area of the facility (or occupational group for those HCWs not assigned to a specific area of the facility). There are optimum measures that all health-care facilities should implement to ensure that a program suitable to the needs of HCWs and patients is in place (Table 2). Additional measures may be necessary in facilities with a greater potential for TB transmission.

• In "low risk" areas, PPD testing of HCWs should be done annually, a repeat risk assessment should be done annually, the ventilation system should be evaluated annually, and TB isolation room negative pressure should be checked daily when in use.

• In "intermediate risk" areas, PPD testing of HCWs should be done every 6 months, a repeat risk assessment should be done every 6 months, the ventilation system should be evaluated every 6 months, and TB isolation room negative pressure should be checked daily when in use.

• In "high risk" areas, problem evaluation should be immediately conducted (section II.K). PPD testing should be done every 3 months, a repeat risk assessment should be done every 3 months, the ventilation system should be evaluated every 3 months, and TB isolation room negative pressure should be checked daily when in use.

• Areas in which cough-inducing procedures are performed on patients who may have TB should, at the minimum, implement the intermediate protocol.

• The occurrence of drug-resistant TB in the facility or the community, or a high prevalence of HIV infection among patients or HCWs in the facility may increase the concern about transmission of TB and may influence the decision regarding the protocol to follow in favor of a higher risk classification.

• Health-care facilities are likely to have a combination of low-, intermediate-, and high-risk areas or groups in the same time period and may not follow the same protocol in all areas. The appropriate protocol should be implemented for each area or occupational group.

• The number of rooms available for TB isolation should be determined by the number of TB patients seen in the area or by the occupational groups (Section II.E.5).

• Protocols for detection of patients who may have active TB should be based on the number and characteristics of TB patients seen in the area or by the occupational group (Section II.C).

3. *Periodic Reassessment.*

• Follow-up risk assessment should be performed at the interval indicated by the most recent risk assessment (Figure 1). Based on the follow-up assessment, problem evaluation may need to be conducted or the protocol modified to a higher or lower risk level.

• Following each risk assessment, the staff responsible for TB control, in conjunction with other appropriate HCWs, should review all TB control policies to assure that they are effective and meet current needs.

4. *Examples of Risk Assessment and Selection of TB Control Protocol.*

Below are described four hypothetical situations, and how surveillance data are used to select a TB control protocol.

Hospital A: The health-care facility overall HCW PPD test conversion rate is 1.6%. No areas or occupational groups have a significantly greater PPD test conversion rate than areas without occupational exposure to TB patients (and than previous rates in the same area or group). There is no clustering of PPD test conversions. There is no evidence of patient-to-patient transmission. No area admits ≥6 TB patients per year. They will follow the low risk protocol in all areas.

Hospital B: Has an overall HCW PPD conversion rate of 1.8%. The medical intensive care unit (MICU) rate is significantly higher. No other area has a rate that high. They institute problem identification (section II.K). No patient is found that was not isolated appropriately. Other potential problems are then evaluated and no cause is found. The high risk protocol is followed in the MICU until the PPD conversion rate is documented to be similar to areas of the facility without occupational exposure to TB patients for two consecutive three-month periods. If the rate remains significantly higher, further evaluation, including environmental and procedural studies (Table 2), will be performed to identify possible reasons for the high conversion rate.

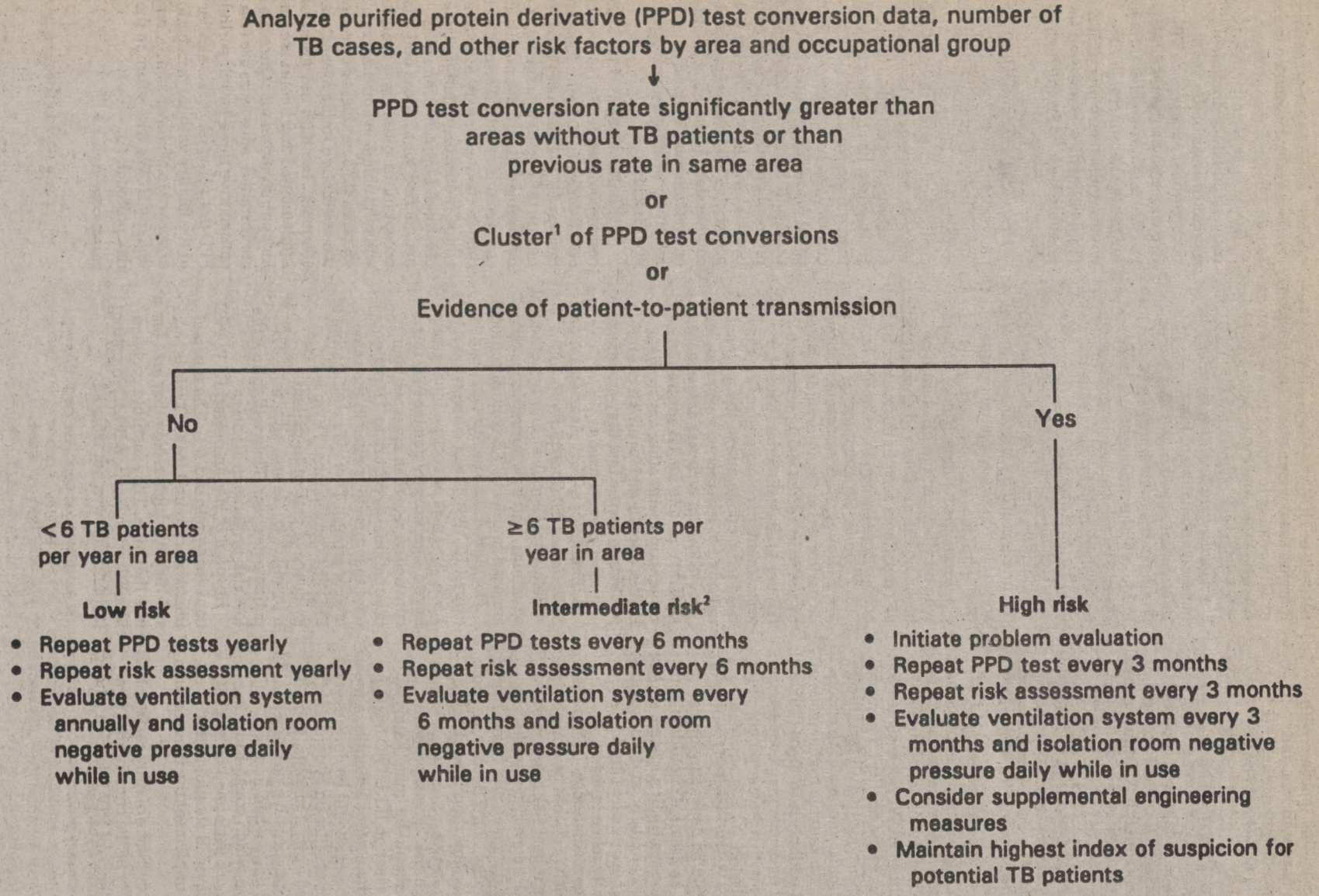
Hospital C: The overall HCW PPD conversion rate is 2.4%. Rates range from 0 to 2.6% in individual areas and departments. None of these rates is significantly higher than rates in areas without occupational exposure to infectious TB patients. No particular HCW group has higher conversion rates than others. No clusters of HCW PPD conversions have occurred. Two units cared for >6 TB patients last year. These units will follow the intermediate protocol and the remainder of the hospital will follow the low-risk protocol. This hospital is in the southeastern United States and these conversion rates may reflect cross reactivity with nontuberculous mycobacteria.

Hospital D: Overall HCW PPD conversion rate 1.2%. No area cared for >6 TB patients last year. Respiratory therapy HCWs had a PPD conversion rate of 15% (3/20 therapists). It was determined that HCWs who had PPD conversions spent all or part of their time in the pulmonary function lab where induced sputum specimens were obtained. Low risk protocol is maintained for all areas of the facility except in the pulmonary function lab, where problem evaluation is conducted (Section II.K), and it is determined that the ventilation in the area is not adequate. The high risk protocol is implemented and booths are installed for sputum induction. Once the booths are installed, after there are two consecutive three-month periods with a PPD test conversion rate similar to areas of the facility without occupational exposure to M. tuberculosis, respiratory therapy HCWs will return to the low-risk protocol.

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Figure 1. Risk Assessment



[1] Cluster = Two or more PPD conversions in one area or a single occupational group that works in multiple areas over a 3-month period

[2] Occurrence of drug-resistant TB in the facility or the community, or high prevalence of HIV infection among patients or workers in the facility may warrant a higher risk rating

TABLE 1.—ELEMENTS OF THE RISK ASSESSMENT

1. Review the number of TB patients seen, by area (inpatient and outpatient). (This information can be obtained by laboratory surveillance or medical record review.)
2. Review the drug-susceptibility patterns of TB patients seen at the facility.
3. Analyze HCW PPD test data, by area (or by occupational group for persons not assigned to a specific area, such as respiratory therapists).

Review medical records of a sample of consecutive TB patients seen at the facility to evaluate infection control parameters.

Calculate intervals from:

- Admission until TB suspected
- Admission until TB evaluation performed
- Admission until AFB specimens ordered
- AFB specimens ordered until AFB specimens collected
- AFB specimens collected until AFB smears done and reported
- AFB specimens collected until cultures done and reported
- AFB specimens collected until species identification done and reported
- AFB specimens collected until drug susceptibility tests done and reported
- Admission until TB isolation initiated
- Admission until TB treatment initiated
- Duration of TB isolation

Additional information:

- Were appropriate criteria used for discontinuing isolation?
- History of prior admission to facility
- Adequacy of TB treatment regimen
- Were follow-up sputum specimens collected appropriately?
- Was appropriate discharge planning conducted?

Perform an observational review of TB infection control practices.

Perform a review of the most recent environmental evaluation and maintenance procedures.

TABLE 2.—OPTIMUM TB CONTROL PROGRAM FOR ALL HEALTH-CARE FACILITIES

I. Initial and Periodic Risk Assessment
- A. Evaluate HCW PPD test conversion data
- B. Determine TB prevalence among patients
- C. Reassess risk each PPD testing period

II. Written TB Infection Control Program
- A. Document all aspects of TB control
- B. Identify individual(s) responsible for TB control program
- C. Explain and emphasize hierarchy of controls

III. Implementation
- A. Assignment of Responsibility
  1. Assign responsibility for TB control program to individual(s)
  2. Ensure that persons with expertise in infection control, occupational health and engineering are identified and included.
- B. Risk Assessment and Periodic Reassessment of the Program
  1. Select initial risk protocols
  2. Observe HCW infection control practices
  3. Repeat risk assessment at appropriate intervals
- C. Early Detection of Patients With TB
  1. Symptom screen for each patient:
     a. On initial encounter in ER or ambulatory care setting
     b. Before or at admission
  2. Radiologic and bacteriologic screening for patients with symptoms of TB
- D. Management of Outpatients With Possible Infectious TB
  1. Promptly initiate TB precautions
  2. Place patients in separate waiting areas or TB isolation rooms
  3. Give patients mask, box of tissues, instructions
- E. Isolation for Infectious TB Patients
  1. Prompt isolation and initiation of treatment for patients with suspected or known infectious TB
  2. Monitoring of response to treatment
  3. Appropriate criteria for discontinuation of isolation
- F. Engineering Recommendations
  1. Local exhaust and general ventilation should be designed in collaboration with persons with expertise in ventilation engineering
  2. In areas where infectious TB patients receive care, use single-pass system or recirculation after HEPA filtration
  3. Use additional measures, if needed, in areas where TB patients may receive care
  4. Health-care facilities should be designed to achieve the best possible ventilation air flows
  5. Regularly monitor and maintain engineering controls
  6. Monitor and maintain TB isolation room negative pressure daily while in use relative to hallway and all surrounding areas
  7. Exhaust TB isolation room air to outside or, if unavoidable, recirculate after HEPA filtration
- G. Respiratory Protection
  1. Respiratory protective devices should meet recommended performance criteria
  2. Should be worn by persons in settings where administrative and engineering controls are not likely to provide adequate protection (e.g., TB isolation rooms, treatment rooms, and other high-risk areas)
  3. A respiratory protection program is required where respiratory protection is used
- H. Cough-Inducing Procedures
  1. Should not be performed on TB patients unless absolutely necessary

TABLE 2.—OPTIMUM TB CONTROL PROGRAM FOR ALL HEALTH-CARE FACILITIES—Continued

- 2. Should be performed using local exhaust or in individual TB isolation room
- 3. After completion, TB patients should remain in booth or enclosure until cough subsides

I. HCW TB Education
- 1. All HCWs should receive periodic education appropriate to their job
- 2. Should include epidemiology of TB in the facility
- 3. Should emphasize concepts of pathogenesis and occupational risk
- 4. Should describe practices that reduce TB transmission

J. HCW Counseling and Screening
- 1. Counsel all HCWs regarding TB and TB infection
- 2. Counsel all HCWs about increased risk if immunocompromised
- 3. PPD test all HCWs on employment and repeat at periodic intervals
- 4. Screen symptomatic HCWs for active TB

K. Evaluate HCW PPD Test Conversions and Possible Nosocomial TB Transmission

L. Coordinate Efforts with Public Health Department

C. Detection of Patients Who May Have Active TB

• The most important steps in preventing TB transmission are early detection of patients who may have infectious TB, prompt application of TB isolation precautions for such patients, and prompt initiation of effective treatment in those in whom the diagnosis of TB is likely.

Health-care personnel assigned responsibility for TB infection control in ambulatory care and inpatient settings should develop, implement, and enforce protocols for early detection of patients who may have infectious TB.

The criteria used in these protocols should be based on the prevalence and characteristics of TB in the population served by the specific facility. Review of medical records of patients seen in the facility who were found to have TB may serve as a guide for developing or revising these protocols.

• A diagnosis of TB should be considered in any patient with persistent cough (>2 weeks duration) or other signs or symptoms compatible with TB such as complaints of bloody sputum, night sweats, weight loss, anorexia, or fever. The index of suspicion for TB should be very high in areas or among groups of patients in which the prevalence of TB is high (Section I.B).

• Diagnostic measures for identifying TB should be instituted among such patients. These measures include history, physical examination, PPD test, chest radiograph, and microscopic examination and culture of sputum or other appropriate specimens (31—Strong1981, 4—ATS/CDC1990, 32—CDC1989b). Other diagnostic methods, such as bronchoscopy or biopsy, may be indicated for some patients (Supplement 2) (33—Willcox1982, 34—Willcox1986).

• Laboratories should use the most rapid methods available (e.g., fluorescent microscopy for AFB smears; radiometric culture methods for isolation of mycobacteria; ρ-nitro-α acetylamino-β-hydroxy-proprophenone [NAP] test, nucleic acid probes or high-pressure liquid chromatography [HPLC] for species identification; radiometric methods for drug-susceptibility testing). As other more rapid or sensitive tests become available, practical, and affordable, such tests should be promptly incorporated into the mycobacteriology laboratory.

• Results of AFB smears of sputum should be available in ≤24 hours of specimen collection. In some cases, availability of "stat" AFB smears may facilitate screening for TB.

• The probability of TB is higher among patients with a positive PPD test or a history of a positive PPD test, previous TB, exposure to TB, and among patients who belong to a group at high risk for TB (Section I.B). Active TB is strongly suggested if the diagnostic evaluation reveals AFB in sputum, a chest radiograph suggestive of TB or symptoms highly suggestive of TB. TB may occur simultaneously in immunosuppressed persons with pulmonary infections due to other organisms, such as Pneumocystis carinii or M. avium complex, and should be sought in the diagnostic evaluation of all patients with symptoms compatible with TB (Supplements 1 and 2).

• In addition to other measures for detecting patients with TB, immunosuppressed patients with pulmonary signs or symptoms that are initially ascribed to other etiologies should be evaluated for co-existing TB initially and the evaluation should be repeated if the patient does not respond to appropriate therapy for the presumed etiology of the pulmonary abnormalities (Supplements 1 and 2).

• TB may be more difficult to diagnose among persons with HIV infection or other conditions associated with severe suppression of cell-mediated immunity; the diagnosis may be overlooked because of an unusual or atypical clinical or radiographic presentation and/or the simultaneous occurrence of other pulmonary infections (e.g., P. carinii pneumonia). Among persons with HIV infection, the difficulty in making a diagnosis may be further compounded by impaired responses to PPD tests (35—Pitchenik1984, 36—Maayan1985), possibly lower sensitivity of sputum smears for detecting AFB (37—Klein1989), or overgrowth of cultures with M. avium complex among patients with both M. avium complex and M. tuberculosis (38—Burnens1989).

• Patients with suspected or confirmed TB should be reported to the appropriate health department immediately so that standard procedures for identifying and evaluating TB contacts can be initiated.

D. Management of Patients in Ambulatory Care Settings and Emergency Rooms

• Triage of patients should include vigorous efforts to detect patients with active TB promptly. HCWs who are the first points of contact in facilities serving patients at risk for TB should be trained to ask appropriate questions which will help recognize and detect patients with signs and symptoms suggestive of TB.

• Patients with signs or symptoms suggestive of TB should be evaluated promptly to minimize the time spent in ambulatory care areas. Such patients should also have TB precautions applied while the diagnostic evaluation is being conducted. TB precautions in the ambulatory care setting consist of 1) placing the patient in a separate waiting area apart from other patients and not in open waiting areas, ideally, in a room meeting TB isolation requirements, and 2) giving the patient a surgical mask and instruction to keep it on. Patients should also be given tissues and instructed to cover their mouths and noses when coughing or sneezing, if

they must remove their mask to facilitate respiratory clearance.

• Patients who are known to have active TB and who have not completed therapy, should have TB precautions applied until they are documented to be noninfectious (Supplement 1).

• Patients with active TB who need to be seen in a clinic should have appointments scheduled to avoid exposing HIV-infected or otherwise severely immunocompromised persons. This could be accomplished by setting aside certain times of the day for appointments for these patients or having them seen in areas where immunocompromised persons are not treated.

• Ventilation in ambulatory care areas serving patients at high risk for TB should be designed and maintained to reduce the risk of TB transmission. General-use (e.g., waiting rooms) and special areas (e.g., treatment or TB isolation rooms in ambulatory areas) should be ventilated in the same manner as described for similar inpatient areas (Sections II.E.4, II.F, and Supplement 3). Enhanced general ventilation or the use of air disinfection techniques, such as in-room recirculation of air through high-efficiency particulate air (HEPA) filters or UVGI may be useful in facilities where many infectious TB patients receive care in general-use areas for reducing the risk of transmission in these areas (see Section II.F and Supplement 3 for specific details and limitations of these disinfection techniques).

• Ambulatory care settings in which patients with TB are frequently seen should have TB isolation room(s) available. In ambulatory care settings where cough-inducing procedures are performed, the additional guidelines in section II.H. should be followed.

E. Management of Hospitalized Patients With TB

1. Evaluation for TB.

• Vigorous efforts should be made to detect patients with TB and initiate appropriate therapy promptly. Pulmonary TB should always be included in the differential diagnosis of persons with signs and symptoms suggestive of TB, and appropriate diagnostic measures should be used.

2. Initiation of treatment.

• Patients who have confirmed active TB or are considered highly likely to have active TB should be started on appropriate treatment promptly, according to current guidelines (Supplement 2) (39—CDC1993b). In areas or facilities in which there is a high prevalence of MDR–TB, the initial regimen used (while results of drug-susceptibility tests are pending) may need to be enhanced. The decision should be based on analysis of surveillance data.

• While the patient is in the health-care facility, antituberculosis drugs should be administered by directly observed therapy (DOT), in which a HCW observes the patient ingesting the medications. Strong consideration should be given to continuing DOT when the patient is discharged. This decision and arrangements for providing outpatient DOT should be made in collaboration with the health department.

3. Initiation of TB isolation.

• In hospitals and other inpatient facilities, any patient suspected or known to have infectious TB should be placed in TB isolation in a private room with appropriate ventilation (Section II.E.5, Supplement 3). There should be written policies for initiating TB isolation that specify (1) the indications for isolation, (2) who is authorized to initiate and discontinue isolation, (3) isolation practices, (4) monitoring of isolation, (5) management of patients who will not comply with isolation practices, and (6) criteria for discontinuing isolation.

• Pediatric patients with suspected or confirmed TB should be evaluated for potential infectiousness as are adults, on the basis of symptoms, sputum AFB smears, radiologic findings, and other criteria. Those with pulmonary or laryngeal TB should be placed in TB isolation until they are determined to be non-infectious.

• Intensive care unit patients, like patients in non-critical care settings, should be placed in TB isolation and have respiratory secretions submitted for AFB smear and culture if they have undiagnosed pulmonary symptoms suggestive of TB.

• When patients with previously diagnosed TB are readmitted to an inpatient facility before confirmation of complete cure, they should be placed in TB isolation until infectiousness has been ruled out.

4. TB isolation practice.

• Patients who are placed in TB isolation should be educated about the transmission of TB and the reasons for TB isolation. They should be taught to cover their mouths and noses with a tissue when coughing or sneezing, even while in the TB isolation room, thus containing most liquid drops and droplets before they are expelled into the air (40—Riley 1974).

• Patients in TB isolation should remain in the isolation room with the door closed. Diagnostic and treatment procedures should be performed in the isolation room whenever possible to avoid transportation of the patient throughout the institution. If a patient who may have infectious TB must be transported outside the TB isolation room for a medically essential procedure that cannot be done in the room, he/she should wear a surgical mask covering the nose and mouth when transported outside the TB isolation room. The person transporting the patient does not need to wear respiratory protection outside of the isolation room. Efforts should be made to schedule the procedure at a time when it can be performed rapidly and when waiting areas are less crowded.

• Treatment and procedure rooms where patients who have infectious TB or undiagnosed pulmonary disease and are at high risk for active TB receive care should meet the ventilation recommendations for TB isolation rooms (Section II.E.5, Supplement 3). Ideally, an area in the radiology department should be separately ventilated for TB patients. If this is not possible, the patient should be masked and spend the minimum amount of time possible in the radiology suite and returned promptly to the isolation room.

• Efforts should be made to facilitate patient adherence to TB isolation measures, such as staying in the room. Such efforts might include the use of incentives, such as providing telephones, televisions, or radios in the room, or allowing special dietary requests. Efforts should also be made to address other problems that may interfere with adherence to isolation. Withdrawal from addictive substances (including tobacco) should be appropriately managed.

• The number of persons entering the TB isolation room should be kept to a minimum. All persons who enter a TB isolation room or other room where known or suspected TB patients are receiving care should wear respiratory protection (Section II.G, Supplement 4).

5. The TB isolation room.

• TB isolation rooms should be single-patient rooms with special ventilation characteristics appropriate for the purposes of TB isolation (below and Supplement 3). The primary purposes of the isolation room are to (1) isolate patients who are likely to have infectious TB from other people, (2) prevent escape of droplet nuclei from the room, thus preventing entry of M. tuberculosis into the corridor and other areas of the facility, and (3) provide an environment that will allow reduction of the concentration of droplet nuclei through various engineering controls.

• The isolation room should be maintained under negative pressure (Supplement 3). TB isolation room doors should be kept closed, except when patients or personnel must enter or exit the room, in order to maintain negative pressure. Negative pressure should be monitored daily while the room is being used for TB isolation.

• The American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) (41—ASHRAE1991), the American Institute of Architects (AIA) (42—AIA1993), and the federal Health Resources and Services Administration (43—HRSA1984) recommend a minimum of 6 ACH for isolation and treatment rooms based on comfort and odor control considerations. The efficacy of this or any other level of air flow in reducing transmission of airborne pathogens has not been evaluated. Some reports suggest that ventilation rates substantially higher than 6 ACH produce a greater reduction in the concentration of bacteria in a room (44—Riley1961, 45—Galson1968, 46—Kethley1963). However, accurate quantitation of decreases in risk that would result from specific increases in general ventilation levels from 6 ACH to substantially higher values is not possible. Under some experimental conditions, increasing ACH to 37 yielded substantial reductions in concentration of non-mycobacterial test organisms; further increases up to 60 ACH continued to be associated with reductions in concentrations of test organisms, but these reductions were more modest (44—Riley1961, 45—Galson1968, 46—Kethley1963). It is unclear if these data can be extrapolated to TB control. However, ventilation air flows substantially >6 ACH would be expected to result in greater dilution of droplet nuclei. Therefore, it is recommended that health-care facilities be designed to achieve the best possible ventilation air flows.

• Air from isolation rooms should be exhausted to the outside in accordance with applicable federal, state, and local regulations. The air should not be recirculated into the general ventilation. However, if recirculation of air into the general ventilation system from rooms or areas used to treat patients with known or suspected infectious TB is unavoidable (e.g., the ventilation system or facility configuration is such that it is impossible to vent the exhaust to the outside), HEPA filters should be used in the exhaust duct to the general ventilation system to remove infectious organisms and particulates the size of droplet nuclei from the air before the air is returned to the general ventilation system (Section II.F and Supplement 3).

• Although not required, an anteroom may increase the effectiveness of the isolation room by serving as an airlock to minimize the potential for droplet nuclei to escape into the corridor when the door is opened. To work effectively, the anteroom should have positive air pressure in relation to the TB isolation room. The pressure relationship between the anteroom and the corridor may vary according to ventilation design.

• Upper air UVGI or in-room recirculation of air through UVGI devices may be used as adjuncts to general ventilation in the TB isolation room (Supplement 3).

• There should be enough TB isolation rooms to appropriately isolate all patients with suspected or confirmed active TB. This number should be derived through the risk assessment of the health-care facility. All acute care inpatient health-care facilities should have at least one TB isolation room.

• Grouping TB isolation rooms together in one area of the facility may facilitate care of TB patients and installation and maintenance of optimal engineering (particularly ventilation) strategies, and reduces the possibility of transmission of TB to other patients.

6. *Discontinuation of TB isolation.*

• The length of time required for a patient to become noninfectious after starting antituberculous therapy varies considerably (Supplement 1). TB isolation should be discontinued only when the patient is on effective therapy, is improving clinically, and the sputum smear is negative for AFB on three consecutive days.

• Patients with active TB should be monitored for relapse with sputum smears on a regular basis (e.g., every 2 weeks). Failure to take medications as prescribed and the presence of drug-resistant TB are the two most common reasons for a patient remaining infectious. Thus, nonadherence to therapy or drug resistance should be considered in any patient who does not clinically respond to therapy within 2–3 weeks.

• Consideration should be given to continuing isolation for patients with multidrug-resistant TB throughout their hospitalization because of the tendency to treatment failure or relapse (i.e., difficulty in maintaining non-infectiousness) that has been observed in such patients.

7. *Discharge planning.*

• Before a TB patient is discharged from the health-care facility, the facility's staff and public health authorities should collaborate to ensure continuation of therapy. Discharge planning in the health-care facility should include, at a minimum, (1) a confirmed appointment with the provider who will follow the patient until cure, (2) sufficient medication to take until the outpatient appointment, and (3) placement into case management, such as directly observed therapy, or outreach programs of the local health department. It is essential that these plans be initiated and in place well before the patient's discharge.

• Patients who may be infectious at the time of discharge should only be discharged to facilities with TB isolation capability or to home. However, they should not be discharged to home if there are persons in the household who are at high risk of active TB if infected (e.g., HIV-infected or otherwise severely immunocompromised persons or children ≤5 years old).

F. Engineering Control Recommendations

1. *General ventilation.*

This section deals only with engineering controls for general use areas of the health-care facility (e.g., waiting areas or emergency departments). Recommendations for engineering controls for specific areas of the facility (e.g., TB isolation rooms) are contained in the sections dealing with those areas. Supplement 3 includes details regarding ventilation design, evaluation, and supplemental approaches.

• Staff of health-care facilities should either include an engineer or other professional with expertise in ventilation, or the facility should have this expertise available from a consultant who is an expert in ventilation engineering and who also has hospital experience. These persons should work closely with infection control staff to assist in the control of airborne infections.

• Health-care facility ventilation system design should meet federal (e.g., Environmental Protection Agency), state, and local requirements.

• The direction of air flow in health-care facilities should be set up and maintained so that air flows from clean areas to less-clean areas. In areas of a facility in which TB transmission is a potential problem, direction of air flow should be monitored with smoke tubes at intervals defined by the TB control plan.

• Health-care facilities serving populations with a high prevalence of TB may need to supplement general ventilation or use additional engineering approaches (UVGI, HEPA filtration) in general use areas of the

health-care facilities where patients with TB are likely to be found (e.g., waiting areas, emergency rooms, or radiology suites). A single pass, non-recirculating system with air exhausted to the outside or a recirculation system with the air passed through HEPA filters before recirculation to the general ventilation system may be used in general use areas where infectious TB patients are likely to be found.

2. *Additional engineering control approaches.*

a. *HEPA filtration.*

HEPA filters may be used in a number of ways to reduce or eliminate infectious droplet nuclei from room air or exhaust (Supplement 3). These methods include placement of HEPA filters (1) in exhaust ducts to remove droplet nuclei from air being discharged to the outside, either directly or through ventilation equipment; (2) in exhaust ducts discharging air from booths or enclosures into the surrounding room; (3) in ducts discharging room air into the general ventilation system; and (4) in ducts for individual room air recirculation. It should be noted that, although portable HEPA filtration units are available, the effectiveness of such units has not been adequately evaluated, and there is likely to be considerable variation in the effectiveness of these devices. In any application, HEPA filters need to be carefully installed and meticulously maintained to ensure adequate function.

b. *Ultraviolet germicidal irradiation (UVGI).*

For settings in which the risk of TB transmission is high, UV lamps may be used as a supplemental method of reducing the concentration of infectious droplet nuclei (Supplement 3.III). However, the effectiveness of such units has not been adequately evaluated to permit their being substituted for other controls. UV units can be installed in a room or corridor to irradiate the air in the upper portion of the room (upper air irradiation), or they can be installed in ducts to irradiate air passing through the ducts. UV units installed in ducts should not be used as a substitute for HEPA filters prior to recirculation of air from a TB isolation room back into the general ventilation system. However, they may be used in ducts recirculating air back into the same room.

To function properly and decrease hazards to HCWs and others in the health-care facility, UV lamps should be properly installed and adequately maintained (with radiation levels monitored). UV tubes should be changed according to manufacturer's instructions or when meter readings indicate tube failure. A trained individual should be responsible for these measures and for keeping maintenance records. Applicable safety guidelines should be followed. Care should be taken to protect HCWs, patients, visitors, and others from excessive exposure to UV radiation.

G. Respiratory Protection

• Respiratory protective devices used for M. tuberculosis should meet the following criteria:

1. The ability to filter particles 1 micron in size in the unloaded [1] state with a filter efficiency of ≥95% (i.e., filter leakage of ≤5%), given flow rates of up to 50 liters per minute.

Available evidence suggests that infectious droplet nuclei are in the 1–5 micron size range, therefore respirators used in health-care settings should be able to filter the smallest particles in this range efficiently. Fifty liters per minute is a reasonable estimate of the highest flow rate a HCW is likely to achieve during breathing even with strenuous work activities.

2. The ability to be qualitatively or quantitatively fit tested in a reliable way (47—ANS/1992) [2] to obtain a face-seal leakage of no more than 10% for most workers.

3. The ability to fit HCWs with different facial sizes and characteristics, which can usually be met by the availability of at least three sizes of respirators.

4. To ensure proper protection, the facepiece fit should be checked by the wearer each time he or she puts on the respirator, in accordance with OSHA's standard and good industrial hygiene practice.

• The OSHA respiratory protection standard requires that all respiratory protective devices be certified by NIOSH (48—20 CFR 1910.134). Respirators with HEPA filters are the only currently available certified respirators that meet or exceed the performance criteria stated above. Although DM and DFM filters are certified, these criteria are not evaluated. Current NIOSH certification procedures require that DM and DFM filters filter 99% of silica dust, but the certification process does not include adequate tests for filter efficacy against low-concentration aerosols in the size range of droplet nuclei. There is evidence that some respirators with DM and DFM filters do meet these criteria. However, at the present time, the certification process does not determine which NIOSH-certified DM and DFM filters meet these performance criteria.

• Appropriate respiratory protection should be worn by persons potentially exposed to M. tuberculosis in settings where administrative and engineering controls may not provide adequate protection (Supplement 4). Such settings include TB isolation rooms and rooms or enclosures in which patients who may have infectious TB are undergoing cough-inducing or aerosol-generating procedures. Other such settings may include transport of patients who may have infectious TB in emergency transport vehicles, or when urgent surgical or dental care must be provided to a patient who may have infectious TB before the patient can be treated with anti-TB medications and rendered noninfectious.

• In some settings, the risk of TB transmission may be estimated in the risk assessment or the best judgment of infection control staff to be so high that respiratory protection exceeding these criteria may be considered appropriate. In such settings, consideration may be given to the use of higher levels of protection (Table S4–1). Characteristics of a variety of currently available respiratory protection devices are summarized in Table S4–1.

• Health-care facilities in which respiratory protection is used for protection against inhalation of M. tuberculosis are required to develop, implement, and maintain a respiratory protection program (Supplement 4). All HCWs who need to use respiratory protection should be included in this program.

H. Cough-Inducing Procedures

1. *General guidelines.*

Procedures that involve instrumentation of the lower respiratory tract or induce cough may increase the probability of droplet nuclei being expelled into the air. These cough-inducing procedures include endotracheal intubation and suctioning, diagnostic sputum induction, aerosol treatments (including pentamidine therapy), and bronchoscopy. Other procedures that may generate aerosols, (e.g., irrigation of tuberculous abscesses, homogenizing or lyophilizing tissue),

[1] Some filters become more efficient as they become loaded with dust. Health-care settings do not have enough dust in the air to "load" a filter on a respirator. Therefore, the filter efficiency for respirators used in health-care settings must be determined in the unloaded state.

[2] If quantitative fit testing is conducted, because of the well-documented deterioration of protection provided by respirators in the actual workplace compared to that obtained during a fit test, it is established industrial hygiene practice to require a fit test protection factor that is 10 times the assigned protection factor (APF) rating of the testing respirator. Thus, a quantitative fit test would require a fit factor of 100 to guarantee no more than 10% face-seal leakage for most workers in the workplace.

are also included in these recommendations.

• Cough-inducing procedures should not be performed on patients who may have infectious TB unless absolutely necessary.

• All cough-inducing procedures performed on patients who may have infectious TB should be performed using local exhaust ventilation devices (e.g., booths or special enclosures) or, if that is not feasible, in a room that meets the ventilation requirements for TB isolation.

• HCWs should wear respiratory protection when present in rooms or enclosures where cough-inducing procedures are being performed on patients who have, or are at high risk of having, infectious TB.

• After completion of cough-inducing procedures, patients with known or suspected TB should remain in the isolation room or enclosure and not return to common waiting areas until coughing subsides. They should be given tissues and instructed to cover their mouth and nose when coughing. If they must recover from sedatives or anesthesia following procedures such as bronchoscopy, they should be monitored in a separate TB isolation room, and not in recovery rooms with other patients.

• Before the booth, enclosure, or room is used for another patient, adequate time should be allowed to pass so that any droplet nuclei that have been expelled into the air are removed. This time will vary according to the efficiency of the ventilation or filtration used (Supplement 3).

2. *Additional considerations for bronchoscopy.*

• If performing bronchoscopy in positive-pressure rooms (such as operating rooms) is unavoidable, TB should be ruled out before the procedure. If bronchoscopy is being performed for diagnosis of pulmonary disease that may include TB, it should be performed in a room that meets TB isolation ventilation requirements.

3. *Special considerations for the administration of aerosolized pentamidine (AP).*

• All patients should be screened for active TB before prophylactic AP therapy is initiated. Screening should include medical history, PPD test, and a chest radiograph.

• Before each subsequent AP treatment, patients should be screened for symptoms suggestive of TB, such as development of a productive cough. If such symptoms are elicited, a diagnostic evaluation for TB should be initiated.

• For patients with suspected or confirmed active TB, it is preferable to use oral prophylaxis for PCP if clinically practical.

I. Education and Training of Health-Care Workers

All HCWs should receive education about TB that is appropriate to their job category. Training should be conducted before initial assignment and subsequently on a periodic basis (e.g., annually). Although the level and detail of this education may vary according to job description, the following elements should be included in the education of all HCWs:

• The basic concepts of TB transmission, pathogenesis, and diagnosis, including the difference between latent TB infection and active TB disease, the signs and symptoms of TB, and the possibility of reinfection in persons with a positive PPD test.

• The potential for occupational exposure to persons with infectious TB in the health-care facility, including the prevalence of TB in the community and facility, the ability of the facility to appropriately isolate patients with active TB, and situations with increased risk of exposure to TB.

• The principles and practices of infection control that reduce the risk of transmission of TB, including the hierarchy of TB infection control measures and the written policies and procedures of the facility. Site-specific control measures should be provided to personnel in areas needing measures in addition to the basic control program.

• The purpose of PPD testing, the significance of a positive result and the importance of participation in the skin test program.

• The principles of preventive therapy for latent TB infection. Indications, use, and effectiveness, including the potential adverse effects of the drugs (Supplement 2).

• The responsibility of the HCW to seek medical evaluation promptly if symptoms develop that may be due to TB or if PPD test conversion occurs in order to receive appropriate evaluation and therapy and to prevent transmission of TB to patients and other HCWs.

• The principles of drug therapy for active TB.

• The importance of notifying the facility if diagnosed with active TB so appropriate contact investigation can be instituted.

• The responsibilities of the facility to maintain the confidentiality of the HCW while assuring that the HCW with TB receives appropriate therapy and is non-infectious before returning to duty.

• The higher risk posed by TB to individuals with HIV infection or other causes of severely impaired cell-mediated immunity including (1) the more frequent and rapid development of clinical TB after infection with M. tuberculosis; (2) the differences in the clinical presentation of disease; and (3) the high mortality rate associated with MDR–TB disease in such individuals.

• The potential development of cutaneous energy as immune function, measured by CD4 + T-lymphocyte counts, declines.

• The facility's policy on voluntary work reassignment options for immunocompromised HCWs should be explained.

J. Health-Care Worker Counseling, Screening and Evaluation

A TB screening and prevention program for HCWs should be established for protection of both HCWs and patients. Personnel with positive PPD tests, PPD test conversions, or symptoms suggestive of TB should be identified, evaluated to rule out active TB, and started on therapy or preventive therapy if indicated (3—CDC1990b). In addition, the results of the HCW PPD screening program will permit evaluation of the effectiveness of current infection control practices. Recommendations for PPD testing and interpretation can be found in Supplement 2.

1. Counseling the HCW regarding TB.

• Because of the increased risk of rapid progression from latent TB infection to active TB in HIV-positive or otherwise severely immunocompromised persons, all HCWs should know if they have a medical condition or are receiving a medical treatment that may lead to severely impaired cell-mediated immunity. HCWs who may be at risk for HIV infection should know their HIV status, i.e., they should be encouraged to voluntarily seek counseling and testing for HIV antibody status. Existing guidelines for counseling and testing should be routinely followed (49—CDC1993a). Knowledge of these conditions will allow for the HCW to seek appropriate preventive measures, as outlined in this document, and consider voluntary work reassignments. It is particularly important that HCWs who may be at risk for HIV infection and who work in settings where there is increased prevalence of MDR-TB among patients know their HIV status.

• Though implementation of guidelines greatly reduces risk of occupational infection, all HCWs should be counseled about the potential risks, in severely immunocompromised persons, associated with taking care of patients with some infectious diseases, including TB. They should also be

counseled about the need to follow existing recommendations for infection control to minimize the risk of exposure to infectious agents (50—Williams1983). As the best protection against becoming infected, severely immunosuppressed HCWs should avoid exposure to M. tuberculosis. HCWs with severely impaired cell-mediated immunity (due to HIV infection or other causes) who may be exposed to M. tuberculosis should consider a change in job setting. Therefore, HCWs should be advised of options for severely immunocompromised HCWs to voluntarily transfer to areas and activities in which there is the lowest possible risk of exposure to M. tuberculosis. This should be a personal decision for HCWs after being informed of the risk to themselves and evaluating their own job commitment and satisfaction.

• Employers should make reasonable attempts to offer alternative job assignments to an employee with a documented condition compromising cell-mediated immunity who works in a high-risk setting for TB. Immunocompromised HCWs should be referred to an employee health professional who can counsel the employee on an individual basis regarding his/her risk of TB. Upon the request of the immunocompromised HCW, the facility should offer, but not compel, a work setting in which the HCW would have the lowest possible risk of occupational exposure to M. tuberculosis. Evaluation of these situations should also include consideration of the provisions of the Americans With Disabilities Act (ADA) of 1990 (51—ADA) and other applicable federal, state, and local laws.

• All HCWs should be informed that immunosuppressed HCWs need to have appropriate follow-up and screening for infectious diseases, including TB. HCWs who are known to be HIV-infected or otherwise severely immunosuppressed should be tested for cutaneous anergy at the time of PPD testing (Supplement 2). Consideration should be given to retesting immunocompromised HCWs with PPD and anergy tests at least every six months because of the high risk of rapid progression to active TB should infection occur.

• Information provided by HCWs regarding their immune status should be treated confidentially. If the HCW requests voluntary job reassignment, the confidentiality of the worker should be maintained. Facilities should have written procedures on confidential handling of such information.

2. *Screening HCWs for active TB.*

• Any HCW with persistent cough (>2 weeks duration), especially in the presence of other symptoms or signs compatible with TB, such as weight loss, night sweats, bloody sputum, anorexia, or fever, should be evaluated promptly for TB. The HCW should not return to work until TB is excluded or the HCW is on therapy and documented to be noninfectious.

3. *Screening HCWs for latent TB infection.*

• At the time of employment, all HCWs, including those with a history of vaccination with Bacillus of Calmette and Guérin (BCG), should receive a Mantoux PPD (Supplement 2). On the initial test, two-step testing should be performed to detect boosting phenomena that might be misinterpreted as skin test conversions. HCWs with a documented history of a positive PPD test, adequate treatment for disease, or adequate preventive therapy for infection, should be exempt from further PPD screening unless they develop signs or symptoms suggestive of TB.

• All PPD-negative HCWs should undergo repeat PPD testing at intervals determined by the risk assessment (Section II.A). It may be advantageous to stagger the testing of HCWs in a given area or occupational group (e.g., do testing on employment anniversary date or birthdate) rather than testing all HCWs in the area or group at one time, since staggering may lead to earlier detection of transmission.

• Initial and follow-up PPD tests should be administered, read, and interpreted according to current guidelines (Supplement 1). At the time of testing, HCWs should be informed about the interpretation of PPD test results, whether positive or negative, including the possible variable interpretations of induration of ≥5 mm, depending on immune status and exposure to persons with infectious TB.

• If PPD test conversions are identified, other HCWs assigned to the same work area or group should be tested to determine if there is additional evidence of transmission in the area. When HCWs not regularly assigned to a single work area have PPD conversions, an effort should be made to identify the areas where the HCW worked during the time when infection was likely to have occurred, so those areas can be evaluated.

• In any area of the facility where transmission of TB is known to have recently occurred, PPD testing should be repeated every three months until no additional conversions have been detected for two consecutive 3-month intervals. This will allow detection of additional PPD conversions and rapid institution of preventive therapy, and documentation of the effectiveness of the control interventions that have been implemented.

• Results of PPD tests should be recorded both in the individual HCW's employee health record and in a retrievable aggregate database of all HCW PPD test results, so that they can be periodically analyzed to estimate the risk of acquiring new infection in each area or group of the facility.

4. *Evaluation and management of health-care workers with positive PPD tests*—a. *Evaluation.*

• All HCWs with newly recognized positive PPD tests or PPD test conversions should be promptly evaluated for clinically active TB with a chest radiograph and clinical evaluation. Those without clinical TB should be evaluated for preventive therapy according to published guidelines (Supplement 2).

• If a HCW's PPD test converts to positive, a history of possible exposure should be obtained in an attempt to determine the potential source of TB exposure. When the source of exposure is known, the drug susceptibility pattern of the M. tuberculosis isolated from the source should be determined in order to determine appropriate preventive therapy for the HCW with the PPD test conversion.

• All HCWs, including those with a history of a positive PPD, should be reminded periodically that they should be evaluated promptly for any pulmonary symptoms suggestive of TB.

b. *Routine and follow-up chest radiographs.*

• Routine chest radiographs are not required for asymptomatic, PPD-negative HCWs. HCWs with positive PPD tests should have a chest radiograph as part of the initial evaluation of their PPD test; if negative, repeat chest radiographs are not needed unless symptoms develop that may be due to TB (52—Barrett-Connor1980).

c. *Work restrictions.*

Active TB

• HCWs with pulmonary or laryngeal TB pose a risk to patients and other HCWs while they are infectious; therefore, they should be excluded from work until they are no longer infectious. The same work restrictions applicable for immunocompetent HCWs apply to HCWs with active TB and HIV infection or other conditions resulting in severely impaired cell-mediated immunity.

• Before the HCW returns to work, the health-care facility needs to ensure that the HCW with TB is receiving adequate therapy, cough is resolved,

and that the HCW has three consecutive daily sputum AFB smears that are negative. After work duties are resumed and while the HCW remains on antituberculosis therapy, facility staff should ensure that the HCW is maintained on effective drug therapy for the appropriate time period and remains AFB sputum smear negative.

- HCWs with TB at sites other than the lung or larynx usually do not need to be excluded from work if concurrent pulmonary TB has been excluded.
- HCWs with TB who discontinue treatment before the recommended course of therapy has been completed should be excluded from work until treatment is resumed, an adequate response to therapy is documented, and they again have negative sputum smears on three consecutive days.
- Even if a HCW is treated for TB by a private physician, a knowledgeable professional in the health-care facility employee health service should be advised confidentially of the diagnosis and should verify the appropriateness of the treatment and monitor symptoms and job duties.

Latent TB Infection

- HCWs receiving preventive treatment for latent TB infection should be allowed to continue usual work activities.
- HCWs with TB infection who cannot take or do not accept or complete a full course of preventive therapy do not need to be excluded from work, but they should be counseled about the risk of developing active TB and should be instructed on a regular basis to seek evaluation promptly if symptoms develop that may be due to TB, especially if they have exposure to high-risk patients (i.e., patients at high risk for developing TB if they become infected with M. tuberculosis, such as patients who are HIV infected).

K. Problem Evaluation

1. *Investigating PPD conversions and active TB in HCWs.*

If a skin test conversion is identified, the following steps should be taken:

- The HCW should be promptly evaluated for active TB; the initial evaluation should include a thorough history, physical examination and chest radiograph. Other diagnostic procedures (e.g., sputum examination) may be indicated, based on the initial evaluation.
- The HCW should be placed on preventive or curative therapy, if appropriate, according to current guidelines (Supplement 2) (3—CDC1990b).
- A history of possible exposure should be obtained in an attempt to determine the potential source of TB infection. When the source of exposure is known, the drug-susceptibility pattern of the M. tuberculosis isolate from the source should be determined in order to determine appropriate preventive therapy.
- Other HCWs in the same area or group who may have had similar exposure should receive PPD tests to determine if there is additional evidence of transmission. The contact investigation should extend to possibly exposed patients, if indicated.
- Initiate problem evaluation (Table 3), if indicated. If a problem with patient detection, TB isolation practices, or engineering controls is identified, implement the appropriate interventions and follow the high-risk protocol until there have been two consecutive three-month periods with no evidence of transmission.
- If no specific problem can be identified or the problem does not resolve after the apparent cause is corrected and no other cause can be identified, continue following the high-risk protocol in that area and consult with the public health department or other persons with expertise in TB control.
- If transmission appears to be occurring in TB isolation or procedure rooms, engineering controls should be improved as needed.
- If a HCW develops TB, the following steps should be taken: contact investigation should be performed, including other HCWs, patients, and visitors who had significant exposure to the HCW. The public health department should immediately be notified for consultation and to allow for investigation of community contacts not exposed in the health-care facility.
- The public health department should notify facilities when HCWs with TB are reported by physicians so that appropriate contact investigation can be done in the facility. Sharing of such information is by law strictly limited to a need to know basis in order to protect the confidentiality of the HCW.

2. *Investigating possible patient-to-patient transmission of TB.*

Surveillance of active TB cases in patients should be conducted. If this surveillance suggests the possibility of patient-to-patient TB transmission (e.g., high proportion of TB patients have prior admission in past year, sudden increase in patients with drug-resistant TB, multiple patients with identical and characteristic drug-susceptibility or DNA fingerprint patterns) the following steps should be taken:

- Review HCW PPD test and patient surveillance data for the suspected areas to detect additional patients or HCWs with PPD conversions or active disease.
- Look for possible exposures of the new TB patients to other patients with TB during prior admissions (e.g., admitted to same room, area, received same procedure or were in same treatment area on the same day, etc.)

If the above steps suggest that transmission has occurred, the following steps should be taken:

- Conduct a problem evaluation (Figure 2 and Table 3) to determine possible causes of the transmission (e.g., problem with patient detection, institutional barriers to implementation of appropriate TB isolation practices, or engineering controls).
- Determine which additional patients or HCWs may have been exposed and evaluate with PPD tests.
- Consult with the public health department for assistance in community contact investigation.

3. Investigating contacts of persons with TB who were not recognized and isolated appropriately.

When a patient is seen in the institution without being recognized as having TB and promptly isolated, but is subsequently diagnosed as having infectious TB, the following steps should be taken:

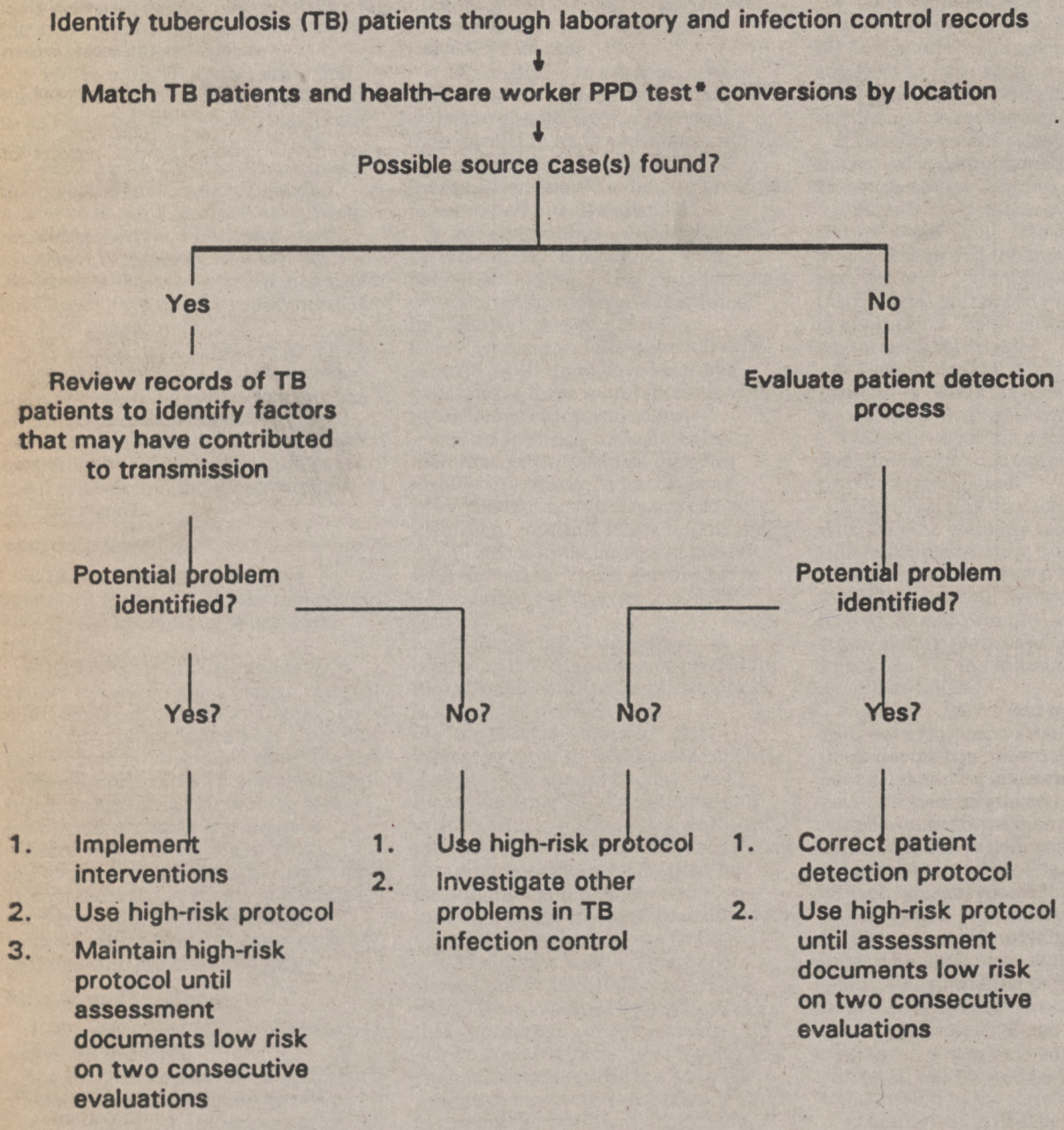
- Identify HCWs and other patients who were exposed to the TB patient by interviewing the patient and appropriate personnel and by reviewing the patient's medical record to determine which areas and persons may have been exposed to the patient prior to appropriate isolation (e.g., outpatient clinics, hospital rooms, treatment, radiology and procedure areas, patient lounges, persons providing direct care, other personnel such as therapists, clerks, transportation personnel, housekeepers, social workers, etc.). Contact investigation should follow a concentric circle, expanding from closest to less close contacts, if transmission to the former is found.
- Administer a PPD test to all HCWs and patients with documented exposure as soon as possible after exposure. If the initial test is negative, a second test should be administered 12 weeks after the exposure was terminated.
- Exposed persons with PPD conversion or with symptoms suggestive of TB should be evaluated clinically and with chest radiographs promptly. Persons with previously known positive PPDs who have been exposed to an infectious patient do not require a

repeat PPD or a chest radiograph unless they have symptoms suggestive of TB.

• In addition to PPD testing of exposed HCWs and patients, an investigation should be conducted to determine why TB was not recognized in the patient or, if recognized, why the patient was not isolated promptly so that appropriate corrective actions may be taken.

BILLING CODE 4160-18-P

Figure 2. Problem Evaluation



*PPD = purified protein derivative skin test

BILLING CODE 4160-18-C

TABLE 3.—EXAMPLES OF POTENTIAL PROBLEMS WITH PATIENT IDENTIFICATION OR TB ISOLATION

Patient identification	Potential problem	Intervention
Triage	Patient with signs or symptoms not identified	Review triage procedures, facilities, and practices.
	Patient had no "triage" symptoms	Reevaluate triage protocol.
	Patient previously admitted for TB not readmitted to isolation.	Review triage process, review discharge planning process.
Laboratory	Positive smear—Results available >24 hours* after submitted.	Change lab practice, assess potential bottlenecks, explore alternatives.
	Positive smear—results available but not acted upon in a timely fashion.	Education of appropriate personnel, review protocol for management of positive smear results.
	Positive culture—results not available for >3 weeks*	Change lab practices, assess potential bottlenecks.
	Positive culture—results available but not acted upon in a timely fashion.	Education of appropriate personnel, review protocol for management of positive culture result.
	Positive culture—susceptibility results not available for >6 weeks*.	Change lab practices, assess potential bottlenecks, explore alternatives.
	Positive culture—susceptibility results available but not acted upon in a timely fashion.	Education of appropriate personnel, review protocol for management of positive culture susceptibility results.
Diagnosis	Patient with signs/symptoms of TB—appropriate tests not ordered in a timely fashion.	Education of appropriate personnel, evaluate protocols for TB detection.
TB isolation	Isolation room unavailable	Reassess need for number of rooms.
	Isolation not ordered or discontinued too soon, or isolation policy not followed properly (e.g., patients ambulating outside of room).	Education of patients and appropriate personnel, evaluate institutional barriers to implementation of isolation policy.
	Personnel not using respiratory protection appropriately	Education of appropriate personnel, evaluation of regularly scheduled re-education, and institutional barriers to respiratory protection use.
	Isolation room or procedure room not negative pressure relative to rest of facility.	Appropriate engineering modifications including regular monitoring and maintenance program.
	Inadequate air circulation	Appropriate engineering modifications.
	Door left open	Education of appropriate personnel and patients, evaluate self-closing doors, comfort in room, other measures to promote door closing.

*Time intervals used as examples and should not be considered absolute standards.

L. Coordination With the Public Health Department

• As soon as a patient or HCW is known or suspected to have TB, the patient or HCW should be reported to the health department, so that appropriate community contact investigation and follow-up can be performed. The health department should be notified well before patient discharge to facilitate follow-up and continuation of therapy. A discharge plan coordinated with the patient or HCW, the health department, and the inpatient facility should be implemented.

• The public health department should protect the confidentiality of the HCW as prescribed by state and local law.

• Health-care facilities and health departments should coordinate their efforts to perform appropriate contact investigations on patients and HCWs with active TB.

• Results of all AFB-positive sputum smears, cultures positive for M. tuberculosis, and drug-susceptibility results on M. tuberculosis isolates should be forwarded to the health department as soon as they become available, in accordance with state and local laws and regulations.

• The health department may be able to provide assistance to facilities for various aspects of planning and implementing a TB infection control program, such as surveillance, screening activities, and outbreak investigations. In addition, the state health department may be able to provide names of experts for the engineering aspects of TB control.

M. Additional Considerations for Selected Areas

The following comments do not apply to all areas or types of facilities, but should be incorporated into the TB Control Plan for the specific area discussed.

1. Operating rooms.

• Elective operative procedures on patients with TB should be delayed until the patient is no longer infectious.

• If procedures must be performed, they should be done in operating rooms with anterooms if possible. For operating rooms without anterooms, the doors to the operating room should be closed and traffic in and out of the room should be kept to a minimum to reduce the frequency of opening and closing the door. Attempts should be made to perform the procedure at a time when other patients are not present in the operative suite (i.e., end of day) and when a minimum number of personnel are present.

• A bacterial filter placed on the patient endotracheal tube or at the expiratory side of the breathing circuit of the anesthesia machine when general anesthesia is being administered to a patient with possible TB may be useful in reducing the risk of contamination of the anesthesia equipment or discharge of tubercle bacilli into the ambient air. The cost-benefit ratio of bacterial filter use is unknown, as no transmission of airborne pathogens has ever been traced to this route.

• The patient should be monitored during recovery in an individual room meeting TB isolation room ventilation recommendations.

• Personnel present when operative procedures are performed on patients who may have infectious TB should wear respiratory protection rather than standard surgical masks alone (Supplement 4). Valved or positive-pressure respirators are not appropriate for use during procedures requiring surgical masks.

2. Autopsy rooms.

• Due to the probability of the presence of infectious aerosols, autopsy rooms should be at negative pressure with respect to adjacent areas, with room air exhausted directly to the

outside of the building. ASHRAE recommends that autopsy rooms have ventilation that provides 12 total air changes per hour (41—ASHRAE1991). However, the effectiveness of this level of ventilation for reducing the risk of TB transmission has not been evaluated. Autopsy rooms should be designed to achieve the best possible air flows; substantially higher levels of ventilation than 12 ACH would be expected to provide greater dilution of droplet nuclei (Supplement 3.II.B.1.b).

• Respiratory protection should be worn by personnel while performing autopsies on patients who may have had TB (Supplement 4).

• In-duct, HEPA-filtered air recirculation or UVGI may be used as a supplement to the recommended ventilation (Supplement 3).

3. *Emergency medical services.*

• When emergency medical response personnel or others must transport patients with confirmed or suspected active TB, a surgical mask should be placed on the patient, if possible. Because of the inability to ensure administrative and engineering controls in emergency transport situations and vehicles, the HCW should wear respiratory protection.

• Emergency-response personnel should be included in a comprehensive PPD screening program and receive a PPD at least annually. They should also be included in the follow-up of contacts of a patient with infectious TB.

4. *Laboratories.*

• Laboratories processing specimens for mycobacterial studies (e.g., AFB smears and cultures) should conform to criteria previously specified by CDC and NIH (53—CDC/NIH1993).

5. *Hospices.*

• Hospice patients with confirmed or suspected TB should be managed in the manner described in this document for hospitals. General use and special areas, such as treatment or TB isolation rooms, should be ventilated in the same manner as described for similar hospital areas.

6. *Nursing homes.*

• Published recommendations for prevention and control of TB in nursing homes should be followed (54—CDC1990c). TB isolation procedures described in this document should be followed.

7. *Correctional facilities.*

• Published recommendations for prevention and control of TB in correctional facilities should be followed (55—CDC1989c).

• Prison medical facilities should follow the recommendations outlined in this document. Ventilation should be designed and maintained to reduce the risk of TB transmission. General and special areas, such as treatment or TB isolation rooms, should be ventilated in the same manner as described for similar hospital areas. If appropriate TB isolation rooms are not available, persons with suspected or known TB should be transferred to facilities with those provisions.

8. *Dental offices.*

During dental procedures, patients and dental workers share the same airspace for varying lengths of time. Aerosols of oral fluids and materials may be generated, and, on occasion, coughing may be stimulated by oral manipulations. No specific dental procedures have been classified as "cough-inducing". In light of these observations, the following additional considerations appear prudent in dental settings:

• During initial medical history and periodic updates, dental HCWs should routinely ask all patients about a history of TB disease and symptoms suggestive of TB.

• Patients with history and symptoms suggestive of active TB should be promptly referred for evaluation for possible infectiousness.

• Elective dental treatment should be delayed until a physician confirms that the patient does not have infectious TB. If the patient is determined to have infectious TB, elective dental treatment should be deferred until the patient is no longer infectious.

• If urgent dental care must be provided for a patient who has, or is strongly suspected of having, infectious TB, TB isolation practices should be implemented (Sections II.E and G). Dental HCWs should use respiratory protection while performing procedures on such patients.

• Dental HCWs who work in a facility where there is a likelihood of exposure to patients with infectious TB should be included in an employer-sponsored PPD testing program.

9. *Home-health services.*

• For HCWs visiting the home of patients with suspected or confirmed infectious TB, precautions may be necessary if the patient is likely to be infectious. These precautions include instructing the patient to cover his/her mouth and nose with a tissue when coughing or sneezing and offering the patient a surgical mask. The worker should wear respiratory protection when entering the home or the patient's room until the patient is no longer infectious (Supplement 1).

• Precautions in the home may be discontinued when the patient is no longer infectious (Supplement 1).

• Home-health-care personnel can assist in preventing TB transmission by educating the patient about the importance of taking medications as prescribed and by administering directly observed therapy.

• If immunocompromised persons or young children live in the home with a patient who has infectious TB, they should be temporarily relocated until the patient is no longer infectious (Supplement 1).

• Cough-inducing procedures should only be performed on patients with infectious TB if absolutely necessary. When necessary cough-inducing procedures, such as AFB sputum collection for evaluation of therapy, must be performed on a patient who may have infectious TB, they should be performed in a well ventilated area of the home away from other household members. Opening a window to improve ventilation, or specimen collection outside should be considered, when feasible. The HCW collecting these specimens should wear respiratory protection during the procedure (Supplement 4).

• Home HCWs should be included in a comprehensive employer-sponsored TB screening and prevention program.

• Home health-care personnel and patients who are at risk for contracting active TB should be reminded periodically of the importance of having pulmonary symptoms promptly evaluated to permit early detection and treatment of persons with TB.

Supplement 1—Determining the Infectiousness of a TB Patient

The infectiousness of a person with TB correlates with the number of organisms expelled into the air, which, in turn, probably correlates with the following factors: (1) Presence of pulmonary, laryngeal, or oral involvement, (2) presence of cough or other forceful expirational maneuvers, including procedures that stimulate coughing, (3) AFB positive sputum smear, (4) willingness or ability of the patient to cover his or her mouth when coughing or sneezing, (5) presence of cavitation on chest radiograph, and (6) length of time the patient has been on adequate chemotherapy.

The most infectious persons are thought to be those untreated persons with pulmonary or laryngeal TB who have a cough or are undergoing cough-inducing procedures, who are AFB sputum smear positive, or who have cavitation on chest radiograph. Persons with extrapulmonary TB are usually not infectious, with the following exceptions: (1) Concomitant pulmonary disease, (2) non-pulmonary disease

located in the respiratory tract or oral cavity, or (3) extrapulmonary disease that includes an open abscess or lesion in which the concentration of organisms is high, especially if drainage from the abscess or lesion is extensive (17—Hutton1990, 19—Lundgren1987). Although data are limited, some studies suggest that TB patients with acquired immunodeficiency syndrome (AIDS), if smear positive, have infectiousness similar to that of smear-positive TB patients without AIDS (56—Manoff1988, 57—Cauthen1991, 58—Klausner1993).

Young children with TB are less likely than adults to be infectious; however, transmission from children can occur. Therefore, children with TB should be evaluated for infectiousness using the same parameters as for adults (i.e., pulmonary or laryngeal TB, presence of cough or cough-inducing procedures, positive sputum AFB smear [or gastric aspirate], cavitation on chest radiograph, and adequacy and duration of therapy). Children with pulmonary or laryngeal TB should be placed on TB isolation until they are determined to be noninfectious.

Infection is most likely to result from exposure to persons with unsuspected pulmonary TB who are not receiving anti-tuberculous therapy or from persons with diagnosed TB who are not receiving adequate therapy. Administering effective anti-tuberculous medications has been shown to be associated with decreased infectiousness among persons with TB (59—Riley1962). Effective chemotherapy reduces coughing, the amount of sputum, and the number of organisms in the sputum. However, the length of time a patient must be on effective medication before becoming noninfectious varies (60—Noble1981); some patients are never infectious, whereas those with unrecognized or inadequately treated drug-resistant TB may remain infectious for weeks or months (21—Beck-Sagué1992). Thus, decisions about infectiousness should be made on a case-by-case basis.

In general, persons suspected or confirmed to have active TB should be considered infectious if (1) cough is present, (2) they are undergoing cough-inducing procedures, or (3) sputum AFB smears are positive, and (4) they are not on chemotherapy, have just started chemotherapy, or have a poor clinical or bacteriologic response to chemotherapy. A person with drug-susceptible TB who is on adequate chemotherapy and has had a significant clinical and bacteriologic response to therapy (reduction in cough, resolution of fever, and progressively decreasing quantity of bacilli on smear) is probably no longer infectious. However, since drug-susceptibility results are usually not known when the decision to discontinue isolation is made, all TB patients should remain in TB isolation while hospitalized until three consecutive sputum smears are negative and they demonstrate clinical improvement.

Supplement 2—Diagnosis and Treatment of TB

I. Diagnostic Procedures for TB

A. Purified Protein Derivative (PPD) Skin Testing and Anergy Testing

The PPD skin test is the only method available for demonstrating infection with M. tuberculosis. Although currently available PPD tests are less than 100% sensitive and specific for detection of infection with M. tuberculosis, no better diagnostic methods have yet been devised. Interpretation of PPD test results requires a knowledge of the antigen used, the immunologic basis for the reaction to this antigen, the technique of administering and reading the test, and the results of epidemiologic and clinical experience with the test (3—CDC1990b, 4—ATS/CDC1990, 2—CDC1990d). The PPD test, like all medical tests, is subject to variability, but many of the inherent variations in administration and reading of tests can be avoided by proper training and careful attention to details.

The intracutaneous (Mantoux) administration of a measured amount of purified protein derivative tuberculin is the best means of detecting infection with M. tuberculosis. One-tenth milliliter of PPD (5 TU) is injected into either the volar or dorsal surface of the forearm. The tuberculin should be injected just beneath the surface of the skin. A discrete, pale elevation of the skin (a wheal) 6 to 10 mm in diameter should be produced.

PPD tests should be read by designated, trained personnel between 48 and 72 hours after injection. Patient or HCW self-reading of PPDs should not be accepted. The basis of the reading is the presence or absence of induration. Redness or erythema should not be measured. The transverse diameter of induration should be recorded in millimeters. The interpretation of a PPD reaction should be influenced by the purpose for which the test was given (e.g., epidemiologic versus diagnostic purposes), by the prevalence of TB infection in the population being tested, and by the consequences of false classification. Errors in classification can be minimized by establishing an appropriate definition of a positive reaction (Table S2–1).

The positive predictive value of PPDs (i.e, the probability that a person with a positive PPD is truly infected with M. tuberculosis) is dependent on the prevalence of TB infection in the population being tested (61—Snider1982). In populations with a low prevalence of TB infection, the probability that a positive PPD represents true infection with M. tuberculosis is very low. In populations with a high prevalence of TB infection, the probability that a positive PPD represents true infection with M. tuberculosis is much higher. In order to ensure that very few persons infected with M. tuberculosis will be classified as having negative reactions and few persons not infected with tubercle bacilli will be classified as having positive reactions, different cut-points are used to separate positive reactions from negative reactions for different groups, depending on the risk of TB in that group.

A lower cut-point (i.e., 5 mm) is used for the highest risk groups, including HIV-infected persons, recent close contacts (recent close contact implies household contact or unprotected occupational exposure similar in intensity and duration to household contact), or persons with abnormal chest radiographs consistent with old TB. A higher cut-point (i.e., 10 mm) is used for persons who are not in the highest risk group but who have other risk factors, such as injecting drug users known to be HIV seronegative; persons with certain medical conditions that increase the risk of progression from latent TB infection to active TB (Table S2–1); medically underserved, low-income populations; foreign-born persons from countries with a high prevalence of TB; and residents of correctional institutions and nursing homes. An even higher cut-point (i.e., 15 mm) is used for all other persons with none of the above risk factors.

Recent PPD converters are considered a high-risk group. An increase of induration of ≥10 mm within a 2-year period is classified as a conversion to a positive test among persons <35 years of age. An increase of induration of ≥15 mm within a 2-year period is classified as a conversion for persons ≥35 years of age (3—CDC1990b). Increases of induration ≥5 mm may be indicative of new infection in certain circumstances (4—ATS/CDC1990).

Persons with HIV-infection may have suppressed reactions to skin tests because of anergy, particularly when CD4-T-lymphocyte counts decline (62—CDC1990e, 63—Canessa1989). Persons

with anergy will have a negative PPD whether or not they are infected with M. tuberculosis. Persons with HIV infection should be evaluated for anergy in conjunction with PPD testing. Two companion antigens (e.g., Candida antigen and tetanus toxoid) should be used in addition to PPD. Persons with >2 mm of induration to any of the skin tests (including tuberculin) are considered not anergic. Reactions of ≥5 mm to PPD are considered to be evidence of TB infection in HIV-infected persons regardless of the reaction to the companion antigens. If there is no reaction (i.e., <3 mm induration) to any of the antigens, the person being tested is considered anergic. In such persons, determining whether or not the person is likely to be infected with M. tuberculosis must be decided on the basis of other epidemiologic factors, such as the proportion of other persons with the same level of exposure who have positive PPDs and the intensity or duration of exposure to infectious TB patients that the anergic person experienced.

BCG vaccination may produce a PPD reaction that cannot be reliably distinguished from a reaction due to infection with M. tuberculosis. In a person who was vaccinated with BCG, the probability that a PPD test reaction results from infection with M. tuberculosis increases (1) as the size of the reaction increases, (2) when the patient is a contact of a person with TB, (3) when the patient's country of origin has a high prevalence of TB, and (4) as the length of time between vaccination and PPD testing increases. For example, a PPD test reaction of ≥10 mm can be attributed to infection with M. tuberculosis in an adult who was vaccinated with BCG as a child and who is from a country with a high prevalence of TB (64—Snider1985).

In persons with TB infection, the ability to react to PPD may gradually wane over time. If tested with PPD, persons who were remotely infected may have a negative reaction. However, the PPD may boost the hypersensitivity, and the size of the reaction may be larger on a subsequent test. This boosted reaction may be misinterpreted as a PPD test conversion from a new infection. The occurrence of the booster phenomenon increases with increasing age.

When PPD testing of adults is to be repeated periodically (as in HCW skin testing programs), two-step testing can be used to reduce the likelihood that a boosted reaction is misinterpreted as a new infection. Two-step testing should be done on all newly employed HCWs who have an initial negative PPD at the time of employment. A second test should be performed 1–3 weeks later. If the second test is positive, this is most likely a boosted reaction, and the person should be classified as previously infected. If the second test remains negative, the person is classified as uninfected. A positive reaction to a subsequent test is likely to represent a new infection with M. tuberculosis in the interval.

TABLE S2–1.—SUMMARY OF INTERPRETATION OF SKIN TESTS

1. A reaction of ≥5 mm is classified as positive in:
   - persons with HIV infection or risk factors for HIV infection with unknown HIV status
   - persons who have had recent close contact* with persons with active TB
   - persons who have abnormal chest radiographs consistent with old healed TB
2. A reaction of ≥10 mm is classified as positive in all persons who do not meet any of the criteria above but who have other risk factors for TB including:
   High-Risk Groups
   - intravenous drug users known to be HIV seronegative
   - persons with other medical conditions that have been reported to increase the risk of progressing from latent TB infection to active TB, including silicosis, gastrectomy, jejuno-ileal bypass surgery, being 10% or more below ideal body weight, chronic renal failure, diabetes mellitus, high dose corticosteroid and other immunosuppressive therapy, some hematologic disorders (e.g., leukemias and lymphomas), and other malignancies

   High-Prevalence Groups
   - foreign-born persons from high prevalence countries in Asia, Africa, and Latin America
   - persons from medically underserved low income populations
   - residents of long-term care facilities (e.g., correctional institutions, nursing homes)
   - persons from high risk populations in their communities, as determined by local public health authorities
3. Induration of ≥15 mm is classified as positive for persons who do not meet any of the above criteria.
4. Recent converters are defined on the basis of both induration and age:
   - ≥10 mm increase within a 2-year period is classified as positive for persons <35 years of age
   - ≥15 mm increase within a 2-year period is classified as positive for persons ≥35 years of age
   - ≥5 mm increases under certain circumstances (#1, above)

*Recent close contact implies household contact or unprotected occupational exposure similar in intensity and duration to household contact.

B. Chest Radiograph

Persons with symptoms suggestive of TB should receive a chest radiograph regardless of PPD test results. Abnormalities strongly suggestive of active TB include upper lobe infiltration, particularly if cavitation is seen (65—DesPrez1990). Patchy or nodular infiltrates in the apical or subapical posterior upper lobes or the superior segment of the lower lobe are also suggestive of active TB. If abnormalities are noted or if the person has symptoms suggestive of extrapulmonary TB, additional diagnostic studies should be undertaken.

The radiographic presentation of pulmonary TB in patients with HIV infection may be unusual (66—Pitchenik1985). Typical apical cavitary disease is less common among persons with HIV infection. They may have infiltrates in any lung zone, often associated with mediastinal and/or hilar adenopathy, or rarely they may have a normal chest radiograph.

C. Bacteriology

Smear and culture examination of three sputum specimens collected on different days is the main diagnostic procedure for pulmonary TB (4—ATS/CDC1990). Sputum smears that fail to demonstrate AFB do not exclude the diagnosis of TB. Nationwide, approximately 60% of patients with

positive sputum cultures have positive AFB sputum smears. Sputum smears from patients with HIV infection and pulmonary TB may be less likely to reveal AFB than those from immunocompetent patients, a finding believed to be consistent with the lower frequency of cavitary pulmonary disease observed among HIV-infected persons (35—Pitchenik1984, 37—Klein1989).

It is important that specimens for smear and culture have adequate volume of expectorated sputum and contain little saliva. In patients with negative sputum smears, bronchoscopy may produce positive results (33—Willcox1982, 34—Willcox1986). In young children who cannot adequately produce sputum, gastric aspirates may provide an adequate specimen.

A positive culture of sputum or other clinical specimen, with organisms identified as M. tuberculosis, provides a definitive diagnosis of TB. Conventional laboratory methods may require 4–8 weeks for species identification; however, the use of radiometric culture techniques and nucleic acid probes facilitates more rapid detection and identification of mycobacteria (67—Kiehn1986, 68—Crawford1989). Mixed mycobacterial infection, either simultaneous or sequential, may occur and may obscure the recognition of M. tuberculosis clinically and in the laboratory (38—Burnens1989). The use of nucleic acid probes for both Mycobacterium avium complex and M. tuberculosis may be useful for identifying mixed mycobacterial infections in clinical specimens.

II. Preventive Therapy for Latent TB Infection and Treatment of Active TB

A. Preventive Therapy for Latent TB Infection

Determining whether or not a person with a positive PPD reaction or conversion is a candidate for preventive therapy must be based on (1) the likelihood that the reaction represents true infection with M. tuberculosis (as determined by the cut-points), (2) the estimated risk of progression from latent infection to active TB, and (3) the risk of hepatitis with isoniazid preventive therapy (as determined by age and other factors).

HCWs with positive PPD tests should be evaluated for preventive therapy, regardless of age if they are a recent converter, a close contact of a person with active TB, have a medical condition that increases the risk for TB, have HIV infection, or use injecting drugs (3—CDC1990b). HCWs without those risk factors should be evaluated for preventive therapy if they are under age 35.

Preventive therapy should be considered for anergic persons who are known contacts of infectious TB patients and for those from groups in which the prevalence of TB infection is high (i.e., ≥10%).

Because of some reports of an increased risk of isoniazid hepatitis in the peripartum period, the decision to use preventive therapy during pregnancy should be made on a case-by-case basis, depending on the patient's estimated risk of progression to active disease (69—Moulding, 70—Snider1980, 71—Snider1984, 72—Hamadeh1992). Although testing in animals has demonstrated a risk of cancer (73—IARC1974), there are no data to suggest that INH poses a carcinogenic risk for humans (74—Glassroth #11977, 75—Glassroth #21977, 76—Costello1980).

The usual preventive therapy regimen is oral isoniazid 300 mg daily for adults and 10 mg/kg/day for children (77—CDC1990g). The recommended duration of therapy is 12 months for persons with HIV infection and persons with abnormal chest radiographs consistent with old healed TB; other persons should receive 6 months of therapy. For persons likely to be infected with MDR–TB, alternative multidrug preventive therapy regimens should be considered (78—CDC1992).

All persons placed on preventive therapy should be educated about the possible adverse reactions associated with isoniazid and should be monitored at least monthly by appropriately trained personnel (79—ATS/CDC1986, 77—CDC1990g, 80—ATS/CDC1992, 69—Moulding, 70—Snider1980, 71—Snider1984, 72—Hamadeh1992). Persons with asymptomatic TB infection should be advised of the possibility of reinfection with another strain of M. tuberculosis (81—Small1993).

B. Treatment for Active TB

Drug susceptibility test should be performed on all initial isolates from patients with TB. However, since test results may not be available for several weeks, selection of an initial regimen can be difficult, especially in areas where there is drug-resistant TB. Tables S2–2 and S2–3 summarize current recommendations for initial therapy and dosage schedules for the treatment of drug susceptible TB (39—CDC1993b). In areas or facilities in which there is a high prevalence of MDR–TB, the initial treatment regimen used (while results of drug-susceptibility tests are pending) may need to be expanded. This decision should be based on analysis of surveillance data.

When drug susceptibility results become available, the regimen should be adjusted appropriately (82—Iseman1989, 83—Goble1986, 84—Goble1993, 85—Simone1992). If drug resistance is present, clinicians unfamiliar with the management of patients with drug-resistant TB should seek expert consultation.

In order for any regimen to be effective, adherence to the regimen must be assured. The most effective method of assuring adherence is the use of DOT following discharge (80—ATS/CDC1992, 39—CDC1993b). This should be coordinated with the public health department.

TABLE S2–2.—OPTIONS FOR THE INITIAL TREATMENT OF TB IN CHILDREN AND ADULTS (39)

Option 1	Option 2	Option 3
Initial Phase: Daily isoniazid, rifampin, pyrazinamide, and either ethambutol or streptomycin for 8 weeks. Ethambutol or streptomycin may be discontinued if susceptibility to isoniazid and rifampin is demonstrated. Ethambutol or streptomycin may not be necessary for patients in areas where the primary isoniazid resistance rate is documented to be less than 4%. Continuation Phase: Isoniazid and rifampin for 16 weeks, either daily, two times weekly, or three times weekly.* Consult a TB medical expert if drug susceptibility results show resistance to any of the first-line drugs or if the patient remains smear positive after 3 months.	Initial Phase: Isoniazid, rifampin, pyrazinamide, and either ethambutol or streptomycin daily for 2 weeks, then two times weekly* for 6 weeks. Continuation Phase: Isoniazid and rifampin two times weekly* for 16 weeks. Consult a TB medical expert if drug susceptibility results show resistance to any of the first-line drugs or if the patient remains smear positive after 3 months.	Treat with directly observed therapy 3 times/weekly* with isoniazid, rifampin, pyrazinamide, and ethambutol or streptomycin for 6 months. The strongest evidence from clinical trials is for the effectiveness of all four drugs administered for the full six months. There is weaker evidence that streptomycin can be discontinued after four months if the isolate is susceptible to all drugs. The evidence for stopping pyrazinamide before the end of six months is equivocal for the three-times/weekly regimen and there is no evidence on the effectiveness of this regimen with ethambutol for less than the full six months. Consult a TB medical expert if drug susceptibility results show resistance to any of the first-line drugs or if the patient remains smear positive after 3 months.

* All regimens given two-times/weekly or three-times/weekly should be administered by directly observed therapy.

TABLE S2–3.—DOSAGE RECOMMENDATIONS FOR THE INITIAL TREATMENT OF TB AMONG CHILDREN* AND ADULTS

Drugs	Dosage					
	Daily dose		Two-times/weekly dose		Three-times/weekly dose	
	Children*	Adults	Children*	Adults	Children	Adults
Isoniazid	10–20 mg/kg Max 300 mg	5 mg/kg ..... Max 300 mg	20–40 mg/kg Max 900 mg	15 mg/kg ..... Max 900 mg	20–40 mg/kg Max 900 mg	15 mg/kg Max 900 mg
Rifampin	10–20 mg/kg Max 600 mg	10 mg/kg ..... Max 600 mg	10–20 mg/kg Max 600 mg	10 mg/kg ..... Max 600 mg	10–20 mg/kg Max 600 mg	10 mg/kg Max 600 mg
Pyrazinamide	15–30 mg/kg Max 2 gm	15–30 mg/kg Max 2 gm	50–70 mg/kg Max 4 gm	50–70 mg/kg Max 4 gm	50–70 mg/kg Max 3 gm	50–70 mg/kg Max 3 gm
Ethambutol	15–25 mg/kg Max 2.5 gm .	15–25 mg/kg Max 2.5 gm .	50 mg/kg	50 mg/kg	25–30 mg/kg	25–30 mg/kg
Streptomycin	20–40 mg/kg Max 1 gm	15 mg/kg ..... Max 1 gm	20–40 mg/kg Max 1.5 gm .	20–40 mg/kg Max 1.5 gm .	20–40 mg/kg Max 1 gm	20–40 mg/kg Max 1 gm

*12 years of age or under.

Supplement 3—Engineering Controls

I. Introduction

This supplement provides information on the use of ventilation (Section II) and ultraviolet germicidal irradiation (UVGI) (Section III) for prevention of transmission of TB in health-care facilities. The information provided is designed to orient staff in the health-care facility, including HCWs with clinical responsibilities and infection control, administrative, occupational health and facility maintenance staff, to issues related to engineering controls, and how engineering controls can be evaluated as part of an assessment of the institutional control program. The sections cannot be used in place of consultation with experts who can assume responsibility for advising on selection, installation and maintenance of equipment.

Engineering control issues include (1) local exhaust ventilation (source control method), (2) general ventilation to decrease contamination of air and control direction of air flow, and (3) air cleaning. Issues discussed under general ventilation include (a) dilution and removal of contaminants, (b) room air flow patterns, (c) facility air flow direction, (d) room negative pressure, and (e) TB isolation rooms. Air disinfection can be accomplished by UVGI or by filtration of air, such as through high-efficiency particulate air (HEPA) filters.

II. Ventilation

Ventilation systems for health-care facilities should be designed, and modified when necessary, by ventilation engineers in collaboration with infection control and occupational health staff. Information for designing and operating ventilation systems can be found in the ASHRAE, AIA, and ACGIH recommendations (41—ASHRAE1991, 42—AIA1993, 42—1993, ACGIH 86—1992e).

As part of the TB control plan, health-care facility personnel should determine the number of TB isolation rooms, treatment rooms, and local exhaust devices (for cough-inducing procedures) needed. Locations of these rooms and devices will be dependent upon where ventilation conditions recommended in this document can be achieved. Grouping TB isolation rooms together in one area of the facility may facilitate care of TB patients and installation and maintenance of optimal engineering (particularly ventilation) strategies, and reduces the possibility of transmission of TB to other patients.

Periodic evaluations of the ventilation system should be performed, that include the number of TB isolation rooms, treatment rooms, local exhaust devices, and regular maintenance and monitoring of the local and general exhaust systems and HEPA filter systems, if used.

A. Local Exhaust Ventilation

Purpose: To capture airborne contaminants at or near their source (source control method) and remove them without exposing persons in the area (87—Woods1989).

Source control techniques can prevent or reduce the spread of infectious droplet nuclei into the general air circulation. These techniques are called source control methods because they entrap infectious droplet nuclei as they are emitted by the patient, or "source." They are especially important during performance of medical procedures likely to generate aerosols containing infectious particles or during infectious TB patients' active coughing or sneezing.

Local exhaust is the preferred ventilation technique. Because local ventilation captures airborne contaminants very near their source, before they can disperse, it is often the most efficient way to contain contaminants. Therefore, it should be used wherever cough-inducing treatment procedures permit. There are two basic types of local exhaust techniques that use hoods: the enclosing type, in which the hood either partially or fully encloses the infectious source; and the exterior type, in which the infection source is near but outside the hood. The fully enclosed hood, booth, or tent is always preferable to exterior types because of superior reliability. Descriptions of examples of both enclosing and exterior devices have been published (88—ACGIH1992a, 89—ACGIH1992b).

1. *Enclosing devices.* The enclosing type of local exhaust ventilation includes booths for sputum induction or administration of aerosolized medications (e.g., aerosolized pentamidine) (Figure 1), and tents or hoods made of vinyl or other materials used to enclose and isolate a patient.

Booths or tents used for cough-inducing treatments should be equipped with exhaust fans that have sufficient air flow capacity to remove nearly 100 percent of airborne particles during the time interval between the departure of one patient and the arrival of the next. The time required for removing a given percentage of airborne particles from an enclosed space depends on several factors. These include the number of air changes per hour, which is determined by the number of cubic feet of air in the room or booth, the rate at which air is entering the room or booth at the intake source, the location of the ventilation inlet and outlet, and the physical configuration of the room or booth (Table S3–1).

The exhaust fan should be located on the discharge side of the HEPA filter at the booth discharge. This will maintain negative pressure in the booth with respect to adjacent areas, so that air will flow into the booth through all openings and minimize the possibility that infectious droplet nuclei in the booth will escape and move into adjacent rooms or hallways (Supplement 3.II.B.4).

2. *Exterior devices.* An exterior hood is a hood very near to, but not enclosing, the infectious source. Air flow produced by these devices should be sufficient to prevent cross-currents of air near a patients face from causing escape of droplet nuclei. The device may need to attain an air velocity of at least 200 feet per minute at the patient's breathing zone into the hood to be effective, though little data are available about this. The patient should face directly into the hood opening so that any coughing or sneezing will be directed into the hood. If the patient does not face directly into the hood opening, droplet nuclei may escape into the room.

3. *Discharge from booths, tents, and hoods.* The air from booths, tents, and hoods should be exhausted directly to the outside of the building, away from air-intake vents, people, and animals, in accordance with federal, state, and local regulations concerning environmental discharges. Exhaust ducts should not be located near areas that may be populated (e.g., sidewalks or windows that may be opened). Ventilation system exhaust discharges and inlets should be designed to prevent re-entry of exhaust air. Wind blowing over a building creates a highly turbulent recirculation zone, which can cause reentry of the exhaust into the building (Figure 2). Exhaust flow should be discharged above this zone. Design guidelines for proper placement can be found in the 1989 ASHRAE Fundamentals Handbook (90—ASHRAE1989b). As an additional safety measure, air may be discharged to the outside through HEPA filters to preclude reentry of air containing infectious droplet nuclei into the ventilation supply. This is especially desirable if the exhaust discharge cannot be extended to the roof.

If direct exhaust to the outside is impossible, air from booths, tents, and hoods should only be exhausted within the facility through a properly designed, installed, and maintained HEPA filter. Most local exhaust devices are fitted with HEPA filters, and additional HEPA filtration is not needed if already a part of the device design.

B. General Ventilation

1. *Dilution and removal.* Purpose: To reduce the concentration of contaminants in the air.

General ventilation maintains air quality by two processes, dilution and removal of airborne contaminants. Dilution reduces the concentration of contaminants in a room by supplying air that does not contain those contaminants. The supply air mixes with and then displaces some of the contaminated room air, which is subsequently removed from the room by the exhaust system. This process reduces the concentration of droplet nuclei in the room air and possibly the risk of TB transmission.

a. *Systems.* General ventilation can be achieved using two types of systems; "single pass" or "recirculating" systems. In a single pass system, 100% of the room air is exhausted to the outside. The supply air is air from outside that has undergone appropriate heating and cooling or is from a central system supplying a number of areas. After passing through a room or area, air is exhausted directly to the outside. The single pass system is the preferred choice in areas where infectious airborne droplet nuclei are known to be present (e.g., isolation or treatment rooms). In a recirculating system, only a small portion of the total room or area exhaust is discharged to the outside. This volume of exhaust air is then replaced with fresh outside air. The resulting mixture is then recirculated to the rooms or areas serviced by the system. Recirculating systems can be used for general areas such as waiting or emergency rooms.

b. *Ventilation rates.* Recommended general ventilation rates for health-care facilities are usually expressed in air changes per hour (ACH). The number of ACH is the ratio of the ventilation rate (volume of air entering the room per hour) to the room volume and is equal to the exhaust airflow, Q (cubic feet per minute) divided by the room volume, V (cubic feet) times 60 ($ACH=Q/V\times60$). However, the air will not usually be changed the indicated number of times per hour, as the air flow patterns in the room may not permit complete mixing of the supply and room air in all parts of the room. This results in an "effective" air flow rate in which the supplied air flow may be less than required for proper ventilation. A "mixing factor" is required to account for this (45—Galson1968, 91—ACGIH1992c). The factor can vary from 1 for perfect mixing to 10 for poor mixing. The factor is applied as a multiplier to determine the actual

supply air flow (e.g., ACH recommended times mixing factor equals actual required supply ACH). It is important that the room supply and exhaust be designed to achieve the lowest mixing factor possible. The mixing factor may be estimated by an experienced ventilation engineer but is most accurately determined experimentally for each space configuration. A qualitative measure of mixing can be determined by releasing smoke from smoke tubes at a number of locations in the room and observing movement of the smoke. Movement in all areas will indicate good mixing. Stagnation in some areas is indicative of poor mixing necessitating movement of the supply and exhaust openings or redirection of the supply air.

The American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) (41—ASHRAE1991), the American Institute of Architects (AIA) (42—AIA1993), and the federal Health Resources and Services Administration (92—HRSA1984) recommend a minimum of 6 ACH for isolation and treatment rooms based on comfort and odor control considerations. The efficacy of this or any other level of air flow in reducing transmission of airborne pathogens has not been evaluated. Some reports suggest that ventilation rates substantially higher than 6 ACH produce a greater reduction in the concentration of bacteria in a room (44—Riley1961, 45—Galson1968, 46—Kethley1963). However, accurate quantitation of decreases in risk that would result from specific increases in general ventilation levels from 6 ACH to substantially higher values is not possible. Under some experimental conditions, increasing ACH to 37 yielded substantial reductions in concentration of non-mycobacterial test organisms; further increases up to 60 ACH continued to be associated with reductions in concentrations of test organisms, but these reductions were more modest (44—Riley1961, 45—Galson1968, 46—Kethley1963). It is unclear if these data can be extrapolated to TB control. However, ventilation air flows substantially >6 ACH would be expected to result in greater dilution of droplet nuclei. Therefore, it is recommended that health-care facilities be designed to achieve the best possible ventilation air flows.

Achievement of specific air flows will involve decisions both in ventilation system construction and operation (e.g., energy requirements to move and to heat or cool the air). Feasibility also will vary with respect to new construction or retrofit of existing facilities. The expense and effort to achieve specific higher air flow rates for new construction may not be unreasonable. However, retrofitting of an existing facility to achieve similar air flow rates may be more difficult.

2. *Room air flow patterns.* Purpose: To prevent stagnation or "short circuiting" of air and to provide optimum air flow patterns.

General ventilation systems should be designed to (1) prevent stagnation of the air and (2) prevent "short circuiting" of the supply to the exhaust (i.e., passage of air directly from air intake to the air exhaust). The supply and exhaust locations should first direct the clean air to areas where HCWs are likely to work, across the infectious source, and then, to the exhaust, so that the HCW is not positioned between the infectious source and the exhaust location. This may not always be possible but should be attempted to the fullest extent feasible. One way to accomplish this is to supply air at one end of a room and exhaust it from the opposite end. Another method is to supply air near the ceiling and exhaust it near the floor (most effective when the supply air is cooler than the room air) (Figure 3). However, air flow patterns are affected by large air temperature differentials, the precise location of the supply and exhausts, the location of furniture, movement of HCWs and patients, and the physical configuration of the space. Air flow patterns can be visualized using smoke tubes to observe air flow directions.

3. *Facility air flow direction.* Purpose: To contain contaminated air in localized areas and prevent spread to uncontaminated areas.

The general ventilation system should be designed and balanced to provide air flow patterns from more clean to less clean (or less-contaminated to more-contaminated) areas, such as from hallways to treatment rooms or corridors to patient rooms (41—ASHRAE1991, 42—AIA1993). Examples include the emergency room area, or patient TB isolation rooms, where air should flow inward to assure prevention of spread of contaminants to other areas. Some special treatment rooms where operative and invasive procedures are performed have air flow from room to hallway to provide cleaner air during these procedures. Cough-inducing or aerosol-generating procedures (e.g., bronchoscopy, irrigation of tuberculous abscesses) should not be performed in these rooms on patients who may have infectious TB.

The direction of air flow is controlled by creating a lower (negative) pressure in the area into which flow is desired. Negative pressure is attained by exhausting air from the area at a higher rate than it is being supplied (negative is defined relative to the area from which air is to flow). The level of negative pressure necessary to achieve the desired air flow will depend on the physical configuration of the ventilation system and area, including the air flow path and flow openings, and should be determined by an experienced ventilation engineer on a case-by-case basis.

4. *Room negative pressure.* Purpose: To prevent airborne contaminants escaping from a room.

In order for air to flow from one area to another, there must be a difference in the air pressure between the two areas. Air will flow from the higher pressure to lower pressure area. The lower pressure area is at "negative pressure" relative to the higher pressure area.

a. *Pressure differential.* The pressure difference necessary to achieve and maintain negative pressure in a room is very small and may be difficult to measure accurately. Negative pressure can be achieved by balancing the room supply and exhaust flows to set the exhaust flow to a value 10% (but no less than 50 cubic feet per minute [cfm]) greater than the supply.

The level of negative pressure achieved will depend on the physical configuration of the area, including the air flow path and flow openings. A pressure differential of 0.001 inch of water and an inward air velocity of 100 feet per minute (fpm) are minimum acceptable levels.

Negative pressure in a room can be altered by small changes in the ventilation system operation, or by the opening and closing of the isolation room, corridor doors, or windows. It is, therefore, essential that once an operating configuration has been established, all doors and windows remain appropriately closed in both the isolation room and other areas, except when needed to enter or leave an area.

b. *Monitoring.* Periodic checks are required by use of smoke tubes or by use of an air velocity measuring device with smoke tubes to assure that the desired negative pressure condition is present. Rooms where potentially infectious TB patients are hospitalized, treated, or receive cough-inducing treatments, should be checked for negative pressure on a daily basis when in use by means of smoke tubes or by air velocity measurement devices. If smoke tubes are used, a minimum air velocity of 100 fpm into the room should be verified periodically (e.g., monthly to quarterly) by use of an air velocity measuring device (e.g., a thermoanemometer). The

thermoanemometer does not indicate direction and should be used with the smoke tube to verify air flow direction.

To check a room for negative pressure with a smoke tube, the smoke tube should be placed near the bottom of the door (and at the face of a grille or other opening if so equipped) between the room and the corridor and a small amount of smoke produced by squeezing the bulb (Figure 4). (The principal opening will usually be at the bottom of the door. However, other areas, such as the top and sides of the door, sliding window, etc., should also be checked). The smoke will travel in the direction of air flow. If the room is under negative pressure, the smoke should travel into the room under the door or through the grille (e.g., from higher to lower pressure). If not under negative pressure, the smoke should be blown outward or stay stationary. The smoke tube should be held parallel to the door and the smoke should be issued from the tube slowly to assure that the velocity of the smoke from the tube does not overpower the air velocity. This test is to be done with the door closed. The same technique can be used to check for air flow between areas or for observation of air flow patterns within an area. Care should be taken not to inhale the smoke, because it is irritating if inhaled.

Pressure-sensing devices also can be used for determination of negative pressure, but can be difficult to use correctly. If these devices are used, they should sense the room pressure just inside the air flow path into the room (e.g., at the bottom of the door). Unusual air flow patterns within the room can cause pressure variations. It is possible that negative pressure could exist at the middle of a door with positive pressure at the bottom of the door (Figure 5). A major problem with the use of pressure-sensing devices is that the pressure differentials used to achieve negative pressure are very small, necessitating the use of costly and sensitive mechanical devices, electronic devices, or pressure gauges to assure accurate measurements. If pressure-sensing devices are used, periodic verification by use of smoke tubes is required.

5. *TB Isolation Rooms.* Purpose: To isolate patients with known or suspected TB in rooms designed to prevent the escape of droplet nuclei generated by infectious TB patients.

An important application of negative pressure in TB control is the TB patient isolation room. The primary purposes of the isolation room are to (1) isolate patients who are likely to have infectious TB from other people, (2) prevent escape of droplet nuclei from the room, thus preventing entry of M. tuberculosis into the corridor and other areas of the facility, and (3) provide an environment that will allow reduction of the concentration of droplet nuclei through various engineering controls (Supplement 3.II.B.5). Rooms used for TB isolation should be single-patient rooms with negative pressure relative to the corridor or other areas connected to the room. Doors between the isolation room and other areas should remain closed except for entry or egress and there should be a small gap of ⅛ to ½ inch at the bottom of the door to provide an air flow path. Proper use of negative pressure will prevent the contaminated room air from escaping from the room.

a. *Alternate methods for achieving negative pressure.* An anteroom may be used to reduce escape of droplet nuclei during opening and closing of the isolation room door. If the anteroom has an air supply, the air flow to the anteroom should be set equal to the difference between the room supply and exhaust flows. This should result in pressure positive with respect to the isolation room and neutral with respect to the corridor. If the anteroom does not have an air supply, it is still useful, and should still be positive with respect to the room and negative with respect to the corridor. Some states and localities may have fire codes that prohibit the isolation room from being negative relative to the corridor to prevent entry of smoke into the room in case of fire. In such cases, the anteroom should be supplied with air to make it slightly positive to both the isolation room and the corridor.

Where the existing ventilation system is incapable of achieving the desired negative pressure due to the lack of a ventilation system in the room or a system which cannot provide the proper air flow, a small centrifugal blower (exhaust fan) can be used to exhaust air to the outside either through the building, or through a window or outside wall. This approach may be used as an interim measure to achieve negative pressure, but provides no fresh air and suboptimal dilution.

Another approach to achieving the required pressure difference is to pressurize the corridor. In this approach, the corridor general ventilation system is balanced to create a higher pressure in the corridor than in the room. The type of balancing necessary will depend on the configuration of the ventilation system. Ideally, the corridor air supply should be increased while not increasing the corridor exhaust rate. If this is not possible, the exhaust rate should be decreased either by resetting appropriate exhaust dampers or by partially blocking exhaust grilles serving the corridor return. (Caution should be used, as the exhaust rate could be reduced below acceptable levels.) In some instances, the corridor exhaust may be located out of the corridor. Corridor pressurization can be achieved by use of corridor doors, which can be closed. This approach will require that all settings used to achieve the pressure balance, including doors, be maintained. This approach may not be desirable if the corridor being pressurized has rooms where negative pressure is not desired.

In rooms with recirculating ventilation systems, negative pressure can be achieved by removing the room exhaust from the system return and ducting it to the outside. As with the methods discussed above, caution should be exercised, as the overall ventilation system balance will be affected.

Isolation can also be achieved by use of negative-pressure enclosures, such as tents or booths (Section A.1). These can be used to provide patient isolation in areas such as emergency rooms, and medical testing areas, and to supplement isolation in designated isolation rooms.

b. *Exhaust from TB isolation rooms.* Air discharged from TB isolation rooms should follow the same recommendations as air discharged from local exhaust devices (i.e., booths, tents, or hoods used for cough-inducing procedures) (see Section II.A.3). Caution is required if window fans are used, as excessive negative pressure could create backflow from the room exhaust system into the room.

C. HEPA Filtration

Purpose: To remove contaminants from the air.

HEPA filtration can be used as a method of air cleaning that supplements other recommended ventilation measures. HEPA filters, which remove at least 99.97% of particles 0.3 microns in diameter (the most penetrating size), have been shown to be effective in reducing the concentration of Aspergillus spores (which are in the size range of 1.5–6 microns) to below measurable levels (93—Sherertz1987,94—Rhame1984,95—Opal1986). The ability of HEPA filters to remove tubercle bacilli from the air has not been studied, but M. tuberculosis droplet nuclei probably range from 1–5 microns in diameter, about the same size as Aspergillus spores. Therefore, HEPA filters can be expected to remove infectious droplet nuclei. HEPA filters can be used to clean air before it is

recirculated to other areas of a facility, recirculated back into the same room, or exhausted to the outside.

HEPA filters may be used in a number of ways to reduce or eliminate infectious droplet nuclei from room air or exhaust. These methods include placement of HEPA filters (1) in exhaust ducts to remove droplet nuclei from air being discharged to the outside, either directly or through ventilation equipment; (2) in exhaust ducts discharging air from booths or enclosures into the surrounding room; (3) in ducts discharging room air into the general ventilation system; and (4) in ducts for individual room air recirculation units. Portable HEPA filtration units are available, although the effectiveness of such units has not been adequately evaluated, and there is likely to be considerable variation in the effectiveness of these devices. In any application, HEPA filters need to be carefully installed and meticulously maintained to ensure adequate function.

1. *Recirculation of HEPA-filtered air to other areas of a facility.* When it is impossible for air from TB isolation rooms and local exhaust devices (i.e., booths, tents, or hoods used for cough-inducing procedures) to be exhausted directly outside, it is necessary for the air to be filtered through a HEPA filter before recirculating it to other areas of a facility.

2. *Recirculation of HEPA-filtered air back into the same room.* Recirculation of HEPA-filtered air in a room can be achieved by (1) recirculation of air exhausted from the room into a duct, filtered with an in-duct HEPA filter and returned to the room (Figure 6) or (2) in-room, wall-mounted or portable HEPA filters.

a. *Room recirculation.* Individual room recirculation can be used in areas where there is no general ventilation system, where the system is incapable of providing adequate air flow, or where an increase in dilution is desired without affecting the fresh air supply or negative pressure system already in place. Air is exhausted from the room into a duct, filtered through a HEPA filter, and returned to the room (Figure 6). This technique may be used to add air changes in areas where there is a recommended minimum and it is difficult to meet the recommendation with general ventilation alone. It will permit higher air flow rates than can be normally achieved with general ventilation, since the air does not have to be conditioned, other than filtered.

b. *In-room (portable) systems.* Both the HEPA filter and blower can be located within rooms, and can be either wall mounted or portable. Effectiveness is dependent upon all the air in the room circulating through the HEPA filter, which can be difficult to achieve and evaluate. Efficacy of a particular unit may vary according to the configuration of the room, furniture, persons in the room, placement of supply and exhaust grilles, and placement of the unit. Portable HEPA units have been used to reduce nosocomial Aspergillus infections (94—Rhame1984, 95—Opal1986) and as an interim solution for retrofitting old areas of hospitals. Portable HEPA filtration units may be considered for areas where there is no general ventilation system or where the system is incapable of providing adequate air flow. If these units are used, caution should be exercised to assure that they can recirculate all or nearly all of the room air through the HEPA filter. Some commercially available units are not able to meet this requirement due to design limitations or insufficient air flow capacity. Portable HEPA filtration units have not been evaluated adequately to determine their role in TB infection control programs. Therefore, these units should not substitute for other, more established measures, except for short-term intervention while other engineering controls are being implemented. Some of these units employ UVGI for disinfecting air after HEPA filtration. However, there are no data to suggest that, once air is passed through a HEPA filter, exposing the filtered air to UV irradiation will further decrease the concentration of contaminants.

3. *Use of HEPA filtration when exhausting air to the outside.* Use of HEPA filters to clean air from TB isolation rooms and local exhaust devices (i.e., booths, tents, or hoods used for cough-inducing procedures) before exhausting to the outside may be employed as an added safety measure, but is not necessary. It should be considered where there is any chance that the exhaust air could reenter the system. Discharge from local exhaust devices and TB isolation rooms should follow recommendations in Section II.A.3 of this supplement.

Heat wheel energy recovery units are sometimes used to reduce cost of operating ventilation systems (87—Woods1989). If they are used with the system, a HEPA filter should be used. As the wheel rotates, energy is transferred into (or removed from) the supply inlet air stream. Because of the potential for leakage across seals separating the inlet and exhaust chambers and the theoretical possibility that droplet nuclei could be impacted on the wheel by the exhaust air and subsequently stripped off into the supply air, the HEPA filter should be upstream from the heat wheel.

4. *Installation, maintenance, and monitoring.* Proper installation, testing, and meticulous maintenance are critical if a HEPA filter system is used (96—Woods1988). This is especially true for HEPA filter systems used to recirculate air to other parts of a facility: improper design, installation, or maintenance could permit infectious particles to circumvent filtration and escape into the ventilation system (41—ASHRAE1991). The filters are to be installed to prevent leakage between filter segments and between the filter bed and its frame. A regular scheduled maintenance program is required to monitor the HEPA filter for possible leakage and for filter loading. A quantitative leakage and filter performance test using the dioctal phthalate (DOP) penetration test (97—ASHRAE1992a) should be performed at the initial installation and whenever the filter is changed or moved. The test should be repeated every six months for filters in systems exhausting air from areas where air is likely to be contaminated with M. tuberculosis, such as isolation rooms, and every six months from general areas.

A manometer or other pressure-sensing device should be installed in the filter system to provide an accurate means of objectively determining the need for filter replacement. Pressure drop characteristics of the filter are supplied by the manufacturer. Installation should allow for maintenance without contaminating the delivery system or the area served. The "bag in, bag out" method used for changing filters in systems containing carcinogens (or a similar system) should be used (98—ORNL1979). Because of the potential risk of infection to staff who perform this maintenance, it should be performed only by personnel who are adequately trained. Appropriate respiratory protection is to be worn during maintenance and testing. In addition, filter housing and ducts leading to the housing should be clearly marked "Contaminated Air" (or a similar warning). When a HEPA filter is used, one or more lower efficiency disposable prefilters installed up-stream will extend the useful life of the HEPA filter. The life of a HEPA filter can be increased 25 percent with a disposable filter. If the disposable filter is followed by a 90 percent extended surface filter, the life of the HEPA filter can be extended nearly 900 percent (99—ACGIH1992d). These prefilters should be handled and disposed of in the same manner as the HEPA filter.

TABLE S3–1.—AIR CHANGES PER HOUR AND TIME IN MINUTES REQUIRED FOR REMOVAL EFFICIENCIES OF 90%, 99%, OR 99.9% OF AIRBORNE CONTAMINANTS

[This table is prepared according to the formula* $t_1=(\ln (C_2/C_1)/(Q/V)) \bullet 60$, which is an adaptation of the formula for the rate of purging airborne contaminants (100—Mutchler1973) with $t_1=0$, and $C_2/C_1=1$ – (removal efficiency/100).]

Air changes per hour	Minutes required for a removal efficiency of		
	90%	99%	99.9%
1	138	276	414
2	69	138	207
3	46	92	138
4	35	69	104
5	28	55	83
6	23	46	69
7	20	39	59
8	17	35	52
9	15	31	46
10	14	28	41
11	13	25	38
12	12	23	35
13	11	21	32
14	10	20	30

TABLE S3–1.—AIR CHANGES PER HOUR AND TIME IN MINUTES REQUIRED FOR REMOVAL EFFICIENCIES OF 90%, 99%, OR 99.9% OF AIRBORNE CONTAMINANTS—Continued

[This table is prepared according to the formula* $t_1=(\ln (C_2/C_1)/(Q/V)) \bullet 60$, which is an adaptation of the formula for the rate of purging airborne contaminants (100—Mutchler1973) with $t_1=0$, and $C_2/C_1=1$ – (removal efficiency/100).]

Air changes per hour	Minutes required for a removal efficiency of		
	90%	99%	99.9%
15	9	18	28
16	9	17	26
17	8	16	24
18	8	15	23
19	7	15	22
20	7	14	21
25	6	11	17
30	5	9	14
35	4	8	12
40	3	7	10
45	3	6	9
50	3	6	8

*Where:

t_1=initial time point t_2=time (minutes) required for removal efficiency C_1=initial concentration of contaminants C_2=final concentration of contaminants Q=air flow rate (cubic feet per hour) V=room volume (cubic feet) Q/V=air changes per hour

The times given assume perfect mixing of the air within the space (i.e., mixing factor = 1). However, perfect mixing normally does not occur, and the mixing factor could be as high as 10 if air distribution is very poor. (A discussion of mixing is provided in reference Industrial Ventilation: A Manual of Recommended Practice (151—NIOSH1987). The required time is determined by multiplying the appropriate time from the table by the mixing factor determined for the booth or room. The factor and required time should be included by the manufacturer of the booth or enclosure as part of the operating instructions for the enclosure, and these instructions should be followed.

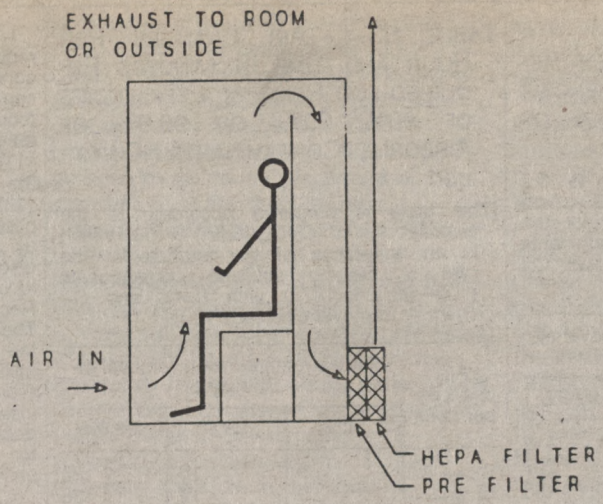


Figure S3–1. Enclosing booth designed to sweep air past patient and entrap infectious droplet nuclei at high-efficiency particulate air (HEPA) filter. Short circuiting of air from supply to exhaust is prevented by structure on which patient sits and wall on which patient rests back.

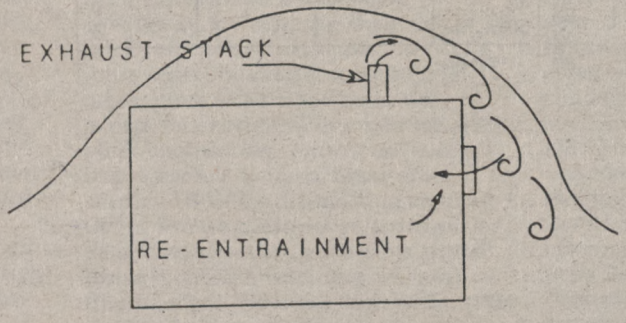


Figure S3–2. Recirculation zone, variable in height, created by wind blowing over a building. Air should be exhausted above this zone to prevent re-entrainment.

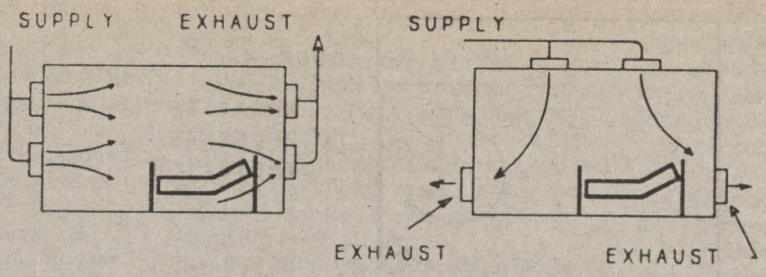


Figure S3–3. Room air flow patterns accomplished by supplying air at opposite sides of the room from the exhaust, and by supplying air at the ceiling and exhausting it near the floor. Such systems can be used to achieve optimum air flow patterns.

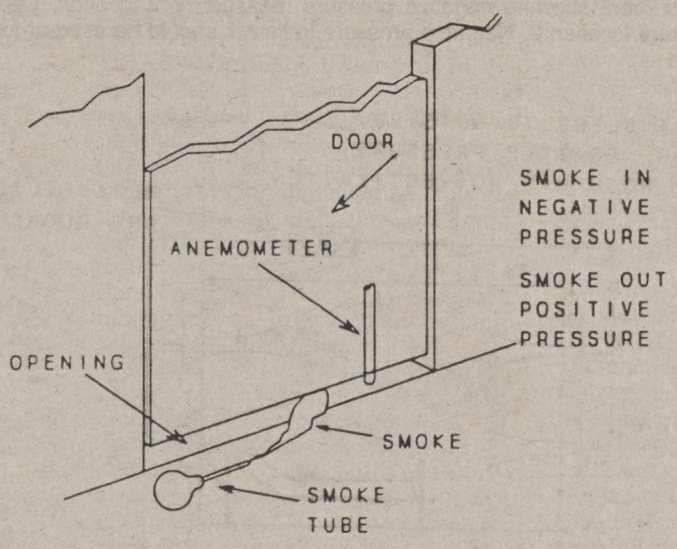


Figure S3–4. Smoke tube testing to determine direction of air flow. Smoke flowing into the room indicates the room is at negative pressure relative to the corridor. Smoke flowing out of the room indicates the room is at positive pressure relative to the corridor. Anemometer, if used, is placed with sensor in the air flow path at bottom of door.

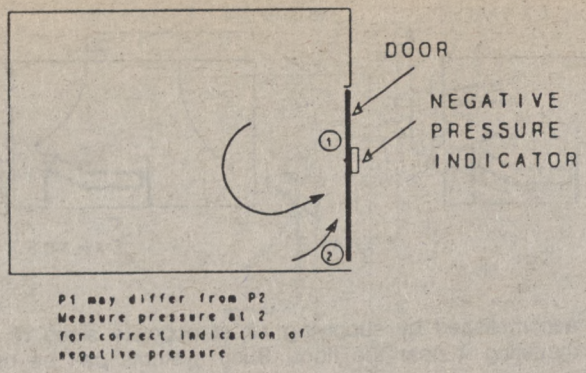


Figure S3–5. Cross-section of a room showing negative pressure measurement location. Certain air flow patterns may cause pressure at location 1 to differ from location 2. Negative pressure indicator should be used at location 2 for correct measurement of negative pressure.

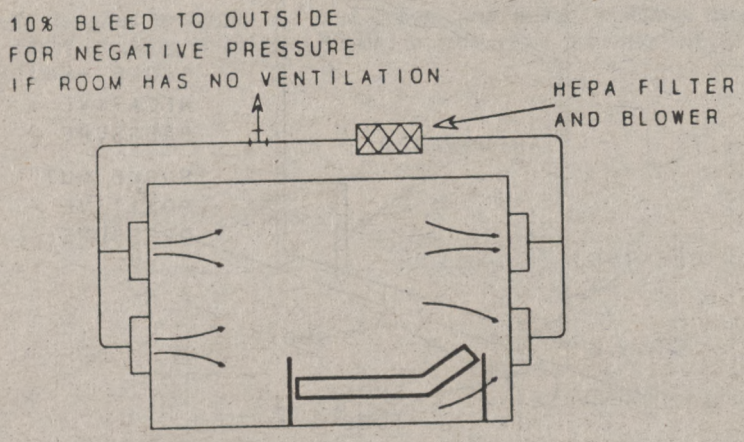


Figure S3–6. Individual room recirculation system using a HEPA filter within an air duct. Such a system can be used to increase the room ventilation rate.

III. Ultraviolet Germicidal Irradiation

Research has demonstrated that ultraviolet germicidal irradiation (UVGI) is effective in killing tubercle bacilli under experimental conditions. Experimental data showed that guinea pigs were completely protected from becoming infected with TB after exposure to air from infectious TB patients after the air had been treated with UVGI (101—Riley1957, 59—Riley1962, 102—Riley1989, 103—Riley1988, 104—Stead1989). Other studies cite effectiveness of UVGI in reducing transmission of other infections in hospitals (105—McLean1961), military housing (106—Willmon1948), and classrooms (107—Wells1942, 108—Wells1950, 109—Perkins1947). On the basis of these findings, other studies (110—Lurie1964, 111—Collins1971, 112—David1971, 113—David1973, 114—Riley1976), and the experience of TB clinicians and mycobacteriologists during the past 2–3 decades, the use of UVGI has been recommended as a supplement to other TB infection control measures in settings where the need for killing of tubercle bacilli is greatest (115—ATS/CDC1983, 1—CDC1982, 4—ATS/CDC1990, 116—NTRDA1969, 117—CDC1971, 118—Schieffelbein1988, 119—CDC1989c).

UV radiation is defined as that portion of the electromagnetic spectrum described by wavelengths from 100 to 400 nm. For convenience of classification, the ultraviolet spectrum has been separated into three different wavelength bands. These bands are UV–A (long wavelengths: 320–400 nm), UV–B (midrange wavelengths: 290–320 nm), and UV–C (short wavelengths: 100–290 nm) (120—CIE1987). Commercially available UV lamps used for germicidal purposes are low-pressure mercury vapor lamps (121—Nagy1964) that emit radiant energy in the UV–C range, predominantly at a wavelength of 253.7 nm (122—IES1966).

A. Applications

UVGI can be used as a method of air disinfection that supplements other engineering controls. Two systems of UVGI can be utilized: duct irradiation and upper room air irradiation.

1. *Duct irradiation.* In duct irradiation systems, the UV lamps are placed inside ducts that remove air from rooms, for the purpose of disinfecting the air before it is recirculated. When UVGI duct systems are properly designed, installed, and maintained, high levels of UV radiation may be produced in the ductwork with no potential for human exposure, except during maintenance operations.

Duct irradiation may be used:

a. For isolation and treatment rooms to recirculate air from the room, through a duct containing UV lamps, back into the room. This recirculation method can increase the overall room air flow but does not increase the supply of fresh (outside) air to the room.

b. For other patient rooms, waiting rooms, emergency rooms, and other general-use areas of a facility where there may be unrecognized TB patients, to recirculate air back into the room.

Duct irradiation systems are dependent on air flow patterns within a room that ensure that all or nearly all of the room air circulates through the duct.

2. *Upper room air irradiation.* In upper room air irradiation, UVGI lamps are suspended from ceilings or mounted on walls. The bottom of the lamp is shielded so that the radiation is directed upwards but not downwards. Thus, the purpose is to disinfect air in the upper part of the room, while minimizing exposure to persons in the lower part of the room. The system depends on air mixing to bring irradiated air from the upper to the lower part, and non-irradiated air from the lower to the upper part. The irradiated air space is much larger than in a duct system. Some studies have demonstrated efficacy of UV under conditions where air mixing was mainly by convection; one in which BCG was atomized in a room without supplemental ventilation (114—Riley1976), another in which a surrogate bacteria, Serratia marcesens, was aerosolized in a room with 6 ACH (123—Kethley1972). These reports estimated the effect of UV to be equivalent to 10 and 39 ACH respectively for the organisms tested, which are less resistant to UVGI than M. tuberculosis (114—Riley1976). The addition of fans or some heating/air conditioning arrangements have been shown to as much as double the effect (124—Riley1971a, 125—Riley1971b, 126—Riley1971c). Greater rates of ventilation, however, may decrease contact time and would be expected to decrease killing and show less added benefit of UVGI (111—Collins1971, 123—Kethley1972). The optimal relationship between ventilation and UVGI is not known. One study demonstrated killing of atomized Serratia marcesens by air irradiation in corridors (127—Riley1971d). A recent study noted that use of UVGI lamps in an outpatient waiting room reduced culturable airborne bacteria by 14 to 19 percent (M. tuberculosis was unable to be cultured from air samples in the study), although it did not reduce the concentration of gram-positive, rod-shaped bacteria (128—Macher1992). The effect in this study, in air exchange equivalents, was only one tenth of that found in the earlier study using BCG.

Upper room air UV irradiation may be used:

a. In isolation or treatment rooms as a supplemental method of air cleaning.

b. In other patient rooms, waiting rooms, emergency rooms, corridors, and other central areas of a facility where there may be unrecognized TB patients.

Determinants of effectiveness include room configuration, UV lamp placement, and the adequacy of air flow patterns in bringing contaminated air into contact with the irradiated upper room space. Air mixing may be facilitated by supplying cool air near the ceiling in rooms where warmer air (or a heating device) is present below. Sufficient ceiling height is needed to allow irradiation of a large volume of upper air space.

B. Limitations

Because the clinical effectiveness of UV systems may vary, and because the risk of TB transmission if a system malfunctions or is improperly maintained, UVGI is *not* recommended for some particular applications. Specifically,

1. Duct systems using UVGI are *not* recommended as a substitute for HEPA filters if it is necessary to recirculate air from TB isolation rooms to other areas of a facility.

2. UVGI is *not* recommended as a substitute for HEPA filtration or local exhaust of air to the outside from booths, tents, or hoods used for cough-inducing procedures.

3. UVGI is *not* recommended as a substitute for negative pressure.

UV lamps in series with a properly maintained HEPA filter would *not* be expected to have any infection control benefit over the HEPA filter alone.

The effectiveness of UVGI in killing airborne tubercle bacilli depends on the intensity of UVGI, the duration of contact the organism has with UVGI, and the relative humidity (59—Riley1962, 105—McLean1961, 102—Riley1989). Humidity has been noted to have an adverse effect on UVGI effectiveness at levels above 70% relative humidity for Serratia marcescens (129—Riley1972). The precise interaction of these factors has not been fully defined, however, making it difficult to develop precise recommendations for individual UVGI installations.

In all UVGI systems, regular maintenance is crucial, since old lamps

or dust-covered lamps become less effective.

C. Safety Issues

Short-term overexposure to UV irradiation can cause keratoconjunctivitis and erythema of the skin (130—NIOSH1972). Broad spectrum UV radiation has been associated with increased risk of squamous and basal cell carcinomas of the skin (131—Urbach1969, 132—IARC1992). UV-C was recently classified by the International Agency for Research on Cancer (IARC) as "probably carcinogenic to humans (Group 2A)" (132—IARC1992). This classification is based on studies suggesting that UV-C radiation can induce skin cancers in animals, induce DNA damage, chromosomal aberrations, sister chromatid exchange and transformation in human cells in vitro, and induce DNA damage in mammalian skin cells in vivo. In the animal studies, a contribution of UV-B to the tumor effects could not be excluded, but the effects were greater than expected for UV-B alone (132—IARC1992). Although some recent studies have demonstrated that UV radiation can activate human immunodeficiency gene promoters (i.e., the genes in HIV that prompt replication of the virus) in laboratory samples of human cells (133—Valerie1988, 134—Zmudzka1990, 135—Wallace1992, 136—Valerie1990, 137—Stein1989, 138—Clerici1992), the implications of these in vitro findings for humans are unknown.

In 1972, NIOSH published a recommended exposure limit (REL) for occupational exposure to UV radiation (130—NIOSH1972). The REL is intended to protect workers from the acute effects of UV exposure (e.g., erythema and photokeratoconjunctivitis). However, photosensitive individuals and those concomitantly exposed to photoactive chemicals may not be protected by the recommended standard. Additional information on the REL is provided in Section D.

Particular precautions with UVGI systems are as follows:

1. Duct irradiation safety issues

HCWs performing maintenance on such fixtures are at risk for exposure to UV radiation, if proper procedures are not followed.

2. Upper room air irradiation safety issues

Because UV fixtures are present in rooms rather than hidden in ducts, safety may be much more difficult to achieve and maintain. Fixtures must be designed and installed in a way that ensures exposure to persons in the room (including HCWs and inpatients) below existing safe exposure levels.

Recent Health Hazard Evaluations conducted by NIOSH have noted problems with overexposure of HCWs to UVGI, and inadequate maintenance, training, labelling, and use of personal protective equipment (139—NIOSH1992a, 140—NIOSH1992b, 141—NIOSH1992c).

Currently, there is a paucity of professionals properly trained in UVGI system design and installation. CDC strongly recommends that a competent UVGI system designer be consulted to address safety issues before a system is procured and installed. Experts who might be consulted for advice include industrial hygienists, engineers, and health physicists. Principles for the safe installation of UV lamp fixtures have been developed and can be used as guidelines (142—Macher1989, 143—Riley1991).

If UV lamps are in use in a facility, the general TB education of HCWs should include:

1. General principles of UVGI: how it works and its limitations.

2. The potential hazardous effects of UVGI if overexposure occurs.

3. The potential for photosensitivity from certain medical conditions or pharmaceuticals.

4. General maintenance procedures for UVGI fixtures and their importance.

Exposure to UV intensities above recommended exposure limits should be avoided. Light-weight clothing made of tightly woven fabric and UV absorbing sunscreens with high solar-protection factors (SPF 15 or greater) may help protect photosensitive individuals. HCWs should be advised that any eye or skin irritation that develops after exposure to UV should be examined by occupational health staff.

D. Exposure Criteria for UV Radiation

The NIOSH document, Criteria for a Recommended Standard * * * Occupational Exposure to Ultraviolet Radiation includes a recommended exposure limit (REL) that is intended to prevent acute effects on skin and eyes (130—NIOSH1972). The NIOSH REL for UV radiation is wavelength dependent because different wavelengths of ultraviolet radiation have differing abilities to cause skin and eye effects. The term relative spectral effectiveness is used to compare various UV sources with a source producing UV radiation only at 270 nm, the wavelength of maximum ocular sensitivity. For example, the relative spectral effectiveness (S_λ) at 254 nm is 0.5, therefore twice as much energy is required at 254 nm to produce an identical biological effect at 270 nm (130—NIOSH1972). Thus, at 254 nm, the permissible 8-hour dose is 0.006 Joules per square centimeter (J cm^{-2}), and at 270 nm it is 0.003 J cm^{-2}.

For germicidal lamps which emit radiant energy predominantly at a wavelength of 254 nm, proper use of the REL requires that the measured irradiance level (E) in microwatts per square centimeter ($\mu W\ cm^{-2}$) be multiplied by the relative spectral effectiveness at 254 nm (0.5) to obtain the effective irradiance (E_{eff}). The maximum permissible exposure time (t) can then be read directly from Table S3–2 for selected values of E_{eff}, or can be calculated (in seconds) by dividing 0.003 J cm^{-2} (the 8-hour permissible dose at 270 nm) by E_{eff} in W cm^{-2} (130—NIOSH1972, 144—ACGIH1991).

To protect HCWs who are exposed to germicidal UV radiation for eight hours per day, the measured irradiance (E), should be $\leq 0.2\ \mu W\ cm^{-2}$. This is calculated by using Table S3–2 to obtain E_{eff} ($0.1\ \mu W\ cm^{-2}$), and then dividing by S_λ (0.5).

E. Maintenance and Monitoring

1. *Labeling and posting.* Warning signs should be posted on UV lamps and wherever high-intensity (above the REL) germicidal UV irradiation is present (e.g., upper room air space and accesses to ducts [if duct irradiation is used]) to alert maintenance or other HCWs of the hazard. Some examples are shown below:

CAUTION
ULTRAVIOLET ENERGY
PROTECT EYES AND SKIN

CAUTION
ULTRAVIOLET ENERGY
TURN OFF LAMPS BEFORE
ENTERING UPPER ROOM

---

2. *Maintenance.* A schedule for replacement of UV lamps should be developed, since the intensity of the lamps varies with age. This could be determined from either a time/use log or a system based on cumulative time. The tube should be checked periodically for dust build up, which will lessen the output of UVGI. If the tube is dirty, it should be cleaned after cooling with a damp cloth. On occasions when a tube stops burning or flickers to an objectionable extent, it should be replaced. Maintenance personnel must turn off all UV tubes before entering the upper part of the room or accessing ducts to change tubes or for any other purpose. Direct exposure to the intense UV of the upper air space or in ducts can cause burns in a matter of seconds.

Protective equipment such as gloves, goggles, and/or face shields should be worn if exposure above recommended standard is anticipated.

Banks of UVGI tubes can be installed in ventilating ducts. Safety devices should be used on access doors to eliminate hazard to maintenance personnel. For duct irradiation systems, the access door for servicing the lamps should have an inspection window (ordinary glass is sufficient to filter out UV radiation) through which the lamps periodically are checked for dust build up and malfunctioning. The access door should also have a sign in appropriate languages alerting maintenance personnel to the health hazard of looking directly at bare tubes. The lock for this door should have an automatic electric switch or other device that ensures that the lamps are turned off whenever the door is opened.

There are two types of fixtures used in upper room air irradiation: Wall-mounted fixtures with louvers to block downward radiation and fixtures suspended from the ceiling with baffles to block radiation below the horizontal plane of the UV tube. The UV tube itself must not be visible from any normal position in the room for either type of fixture. It is appropriate to have switches that can be locked to avoid accidentally turning the lamps on during maintenance procedures.

In most applications it is not difficult to properly shield the UV lamps so that protection from most, if not all, of the direct UV radiation is provided. However, radiation reflected from glass, polished metal, and high-gloss ceramic paints can be harmful to persons in a room, particularly if more than one UV lamp is in use. Surfaces in irradiated rooms that would reflect UVGI into occupied areas of the room should be covered with non-UV reflecting material.

3. *Monitoring.* A regularly scheduled evaluation of the UV intensity to which HCWs and others (e.g., patients) are exposed should be conducted.

UV measurements should be made in a variety of locations within a room using a detector designed to be most sensitive at 254 nm. Equipment used to measure germicidal UV radiation should be maintained and calibrated on a regular schedule.

A new UV installation must be carefully checked for "hot spots" by an industrial hygienist or other person knowledgeable in making UV measurements. UV radiation levels should not exceed the recommended guidelines.

TABLE S3–2.—MAXIMUM PERMISSIBLE EXPOSURE TIMES FOR SELECTED VALUES OF E_{eff}

Duration of exposure per day	Effective irradiance, E_{eff} ($\mu W/cm^2$)
8 hrs	0.1
4 hrs	0.2
2 hrs	0.4
1 hr	0.8
30 min	1.7
15 min	3.3
10 min	5.0
5 min	10.0
1 min	50.0
30 sec	100.0

This table was adapted from a table in Criteria for a Recommended Standard * * * Occupational Exposure to Ultraviolet Radiation (130—NIOSH1972).

Supplement 4—Respiratory Protection

I. Introduction

Personal respiratory protection should be used by persons entering rooms where patients with known or suspected infectious TB are being isolated, during cough-inducing or aerosol-generating procedures on patients with known or suspected infectious TB, and in other settings where administrative and engineering controls are not likely to protect persons from inhaling infectious airborne droplet nuclei.

The precise level of effectiveness of respiratory protection in protecting HCWs from transmission of M. tuberculosis in health-care settings cannot be determined with currently available data. Studies have provided data about the effectiveness of respiratory protection from many hazardous airborne materials, but not from M. tuberculosis. There are gaps in the understanding of the transmission of M. tuberculosis that limit the ability to conduct the appropriate studies to determine the effectiveness of respiratory protection against transmission of M. tuberculosis. Neither the smallest infectious dose of M. tuberculosis nor the highest level of exposure to M. tuberculosis at which transmission will not occur have been conclusively defined (53—CDC/NIH1993, 145—Bloom1992, 146—Nardel11990). Furthermore, the size, size distribution, and number of particles containing viable M. tuberculosis that are generated by infectious TB patients have not been adequately studied, and it is not possible to measure the concentration of infectious droplet nuclei in a room accurately with currently available methods.

Nevertheless, there are certain settings where administrative and engineering controls may not fully protect HCWs from airborne droplet nuclei, such as in TB isolation rooms, during cough-inducing or aerosol-producing procedure, and in certain other settings (e.g., transportation of an infectious TB patient in an ambulance). Respiratory protective devices used in these settings should have characteristics that are suitable for the organism they are protecting against (i.e., M. tuberculosis) and the settings in which they are used (i.e., health-care settings). The recommendations in this document are based on the available data about the effectiveness of respiratory protection against noninfectious hazardous materials in work places other than health-care settings and an interpretation of how these data can be applied to respiratory protection against M. tuberculosis. Although the following recommendations do not offer the maximum available protection, they probably exceed the minimum level of protection needed to prevent occupational exposure.[1]

These are interim recommendations. As new data and devices become available, and if new certification procedures are developed and implemented, these recommendations may be changed.

A. Performance Criteria for Personal Respirators for Protection Against Transmission of M. tuberculosis

Based on the limited data currently available and the considerations stated above, it is recommended that respiratory protective devices used in health-care settings for protection against M. tuberculosis meet the following criteria. These criteria are based on estimated characteristics of respirators that were used in conjunction with administrative and engineering controls in outbreak settings where transmission to HCWs and patients appeared to cease.

[1] The Occupational Safety and Health Act of 1970 (Pub. L. 91–596) requires that NIOSH develop recommendations so that no worker will suffer impaired health or function or diminished life expectancy as a result of his or her work. In September 1992, NIOSH recommended the use of NIOSH-certified, powered halfmask respirators equipped with HEPA filters by all workers potentially exposed to TB in conjunction with an effective respiratory protection program (48, 147—OSHA1910.134). NIOSH concluded that because the amount of infectious droplet nuclei in the air cannot currently be measured and because an exposure limit to M. tuberculosis has not yet been established, a high level of respiratory protection should be recommended.

1. The ability to filter particles 1 micron in size in the unloaded [1] state with a filter efficiency of ≥95% (i.e., filter leakage of ≥5%), given flow rates of up to 50 liters per minute.

Available evidence suggests that infectious droplet nuclei are in the 1–5 micron size range, therefore respirators used in health-care settings should be able to filter the smallest particles in this range efficiently. Fifty liters per minute is a reasonable estimate of the highest flow rate a HCW is likely to achieve during breathing even with strenuous work activities.

2. The ability to be qualitatively or quantitatively fit tested in a reliable way (47—ANSI1992)[2] to obtain a face-seal leakage of no more than 10% for most workers.

3. The ability to fit HCWs with different facial sizes and characteristics, which can usually be met by the availability of at least three sizes of respirators.

4. To ensure proper protection, the facepiece fit should be checked by the wearer each time he or she puts on the respirator, in accordance with OSHA's standard and good industrial hygiene practice.

B. Specific Respirators

The OSHA respiratory protection standard requires that all respiratory protective devices be certified by NIOSH (147—20 CFR 1910.134). Respirators with HEPA filters are the only currently available certified respirators that meet or exceed the performance criteria stated above. Although DM and DFM filters are certified, these criteria are not evaluated. Current NIOSH certification procedures require that DM and DFM filters filter 99% of silica dust, but the certification process does not include adequate tests for filter efficacy against low-concentration aerosols in the size range of droplet nuclei. There is evidence that some respirators with DM and DFM filters do meet these criteria. However, at the present time, there is no way to determine which NIOSH-certified DM and DFM filters meet these performance criteria.

In some settings, the risk of TB transmission may be estimated in the risk assessment or the best judgment of infection control staff to be so high that respiratory protection exceeding these criteria may be considered appropriate. In such settings, consideration may be given to the use of higher levels of protection (Table S4–1). Characteristics of a variety of currently available respiratory protection devices are summarized in Table S4–1.

C. The Efficacy of Respiratory Protective Devices

The following information summarizes the available data about the effectiveness of respiratory protection against hazardous airborne materials, and is based on experience with respiratory protection in the industrial setting. Data for protection against transmission of M. tuberculosis are not available. Table S4–1 summarizes the differences among the categories of respirators. Table S4–2 summarizes the advantages and disadvantages for available categories of respirators.

The parameters used to determine the efficacy of a respiratory protective device are face-seal efficacy and filter efficacy.

1. Face-seal leakage. Face-seal leakage compromises the ability of particulate respirators to protect the worker from airborne material (148—ANSI1980, 149—Hyatt1963, 150—ANSI1961). A proper seal between a respirator's sealing surface and a wearer's face is essential for effective and reliable performance of any negative-pressure respirator. It is less critical, but still important, for a positive-pressure respirator. Face-seal leakage can result from factors such as incorrect facepiece size or shape, incorrect or defective facepiece sealing-lip, beard growth on a wearer, perspiration or facial oils that can result in facepiece slippage, failure to use all the headstraps, incorrect positioning of a facepiece on a wearer's face, incorrect headstrap tension or position, improper mask maintenance, and mask damage.

The mechanism of action of negative-pressure (non-powered) particulate respirators is based on the same principle. During each inhalation by a wearer, a negative pressure (relative to the workplace air) is created inside the facepiece of this type of respirator. Due to this negative pressure, air containing contaminants can take a path of least resistance into the respirator—through leaks at the faceseal interface—thus avoiding the higher-resistance filter material. Currently available, cup-shaped, disposable particulate respirators have 0% to 10% (148—ANSI1980) to 20% (151—NIOSH1987, 152—DCCIR1987) face-seal leakage. This leakage through the face seal results from limitations in the design, construction, number of sizes available of these masks, and the variability of the human face. The face-seal leakage is assumed to be even higher if the respirators are not properly fitted to the wearer's face, tested for an adequate fit by a qualified individual, and then checked for fit by the wearer every time these masks are donned. Face-seal leakage may be reduced to less than 10% with improvements in design and more available sizes, combined with appropriate fit testing and fit checking.

In contrast to non-powered filter respirators, powered air-purifying respirators (PAPRs) produce a positive pressure inside the facepiece under most conditions of use. The blower forcibly draws ambient air through HEPA filters, then delivers the filtered air to the facepiece. This air is blown into the facepiece at flow rates that generally exceed the expected inhalation flow rates. The small positive pressure inside the facepiece reduces face-seal leakage to low levels, particularly during the relatively low inhalation rates expected in health-care settings. Powered air-purifying respirators with a tight-fitting facepiece have less than 2% face-seal leakage under routine conditions (151—NIOSH1987). Powered-air respirators with loose-fitting facepieces, hoods, or helmets have less than 4% face-seal leakage under routine conditions (151—NIOSH1987). Thus, a powered air-purifying respirator may offer lower levels of face-seal leakage than non-powered, half-mask respirators (full face-piece, non-powered respirators have the same leakage, i.e., 2%, as PAPRs). However, a surgical mask should also be worn during procedures where a sterile field is maintained.

Another problem that can contribute to face-seal leakage of cup-shaped, disposable masks is that currently most of these masks are available in only one size. The single size in which most cup-shaped, disposable masks are available may produce higher leakage for wearers with small face sizes (153—Lowry1977). The facepieces used for some reusable (including HEPA and replaceable filter, negative-pressure) and all positive-pressure particulate air-purifying respirators are available in up to three different sizes.

2. *Filter leakage.* Aerosol leakage through respirator filter is dependent on at least five types of independent variables (154—Hyatt1974): (1) the

[1] Some filters became more efficient as they become loaded with dust. Health-care settings do not have enough dust in the air to "load" a filter on a respirator. Therefore, the filter efficiency for respirators used in health-care settings must be determined in the unloaded state.

[2] If quantitative fit testing is conducted, because of the well-documented deterioration of protection provided by respirators in the actual workplace compared to that obtained during a fit test, it is established industrial hygiene practice to require a fit test protection factor that is 10 times the assigned protection factor (APF) rating of the testing respirator. Thus, a quantitative fit test would require a fit factor of 100 to guarantee no more than 10% face-seal leakage for most workers in the workplace.

filtration characteristics for each type of filter, (2) the size distribution of the droplets in the aerosol, (3) the linear velocity through the filtering material, (4) the filter loading (i.e., amount of contaminant deposited on the filter), and (5) any electrostatic charges on the filter and on the droplets in the aerosol.

DM and DFM filters have widely varying efficiencies against particles ≈2 μm (155—Hinds1987, 156—Liu1988, 157—Chen1990, 158—Chen1992) with filter leakage ranging from 0% to 40%. Current NIOSH certification procedures require DM and DFM filters to filter 99% of silica dust,[1] but the certification process does not include adequate tests for filter efficacy against low-concentration aerosols in the size range of droplet nuclei. In contrast, the NIOSH certification performance standard for HEPA filters requires HEPA filters to be at least 99.97% efficient (i.e., leakage must be less than or equal to 0.03%) against the most filter-penetrating aerosol size (approximately 0.3 μm), although these filters are not tested against biological aerosols (159—NIOSH30CFR).

When HEPA filters are used in a particulate air-purifying respirator, filter efficiency is so high (effectively 100%) that filter leakage is not a consideration. Hence, for all HEPA-filter respirators, the potential for inward leakage of droplet nuclei is essentially that which occurs at a mask's face seal. In contrast, many currently available disposable, negative-pressure respirators with DM or DFM filters are likely to have some leakage through the filter that adds to the leakage at the face seal.

3. *Fit testing.* A fit test is used to determine whether a respiratory protective device adequately fits a particular HCW. The HCW may need to be fit tested with several devices in order to determine which device offers the best fit for that HCW. However, fit tests can detect only the face-seal leakage that exists at the time of the fit testing. Also, fit tests do not distinguish face-seal leakage from filter leakage.

Determination of facepiece fit can involve qualitative or quantitative tests (160—NIOSH1991b) (Table S4–3). A qualitative test relies on the wearer's subjective response. A quantitative test uses detectors to measure inward leakage.

Disposable, negative-pressure particulate respirators can be qualitatively fit tested with substances that can be tasted, although the results may not be reliable since they depend on the subjective response of the person being tested. Quantitative fit testing of disposable negative pressure particulate respirators with DM or DFM filters can only be performed if the manufacturer provides a test respirator with a probe for this purpose and cannot be performed using the usual test aerosols of 0.6–0.7 microns, due to filter penetration. The reliability of quantitative fit testing of these devices is not known. Qualitative fit tests can also be performed on disposable negative-pressure particulate respirators with HEPA filters using irritant smoke. Quantitative fit testing can be performed on disposable, negative-pressure particulate respirators with HEPA filter devices using a test respirator with a probe.

Replaceable filter, negative-pressure particulate respirators and all positive pressure particulate respirators can be reliably fit tested both qualitatively and quantitatively when fitted with HEPA filters.

4. *Fit checking.* A fit check is a maneuver that a HCW performs before each use of the respiratory protective device to check the fit. The fit check can be performed according to the manufacturer's facepiece fitting instructions or using a negative pressure test or a positive pressure test (Table S4–3).

Some currently available cup-shaped, disposable negative-pressure particulate respirators with DM, DFM, or HEPA filters cannot be reliably fit checked by wearers (152—DCCIR1987), because it is difficult to occlude the entire surface of the filter. Strategies for overcoming these limitations are under development by respirator manufacturers but have not been evaluated.

5. *Reuse of respirators.* In use against non-biological aerosols, filters must be changed when the filter becomes loaded with airborne material such that breathing resistance becomes uncomfortable or physical damage occurs to a filter. However, in health-care settings, there should be fewer particles in the air. In addition, once particles impact on a filter, they are not readily reaerosolized. Thus, in theory, respirator filters could remain functional for weeks to months, and one HCW could use the same respirator for that period of time. Before each use, the outside of each filter should be inspected for physical damage. Standard operating procedures should be developed by infection control personnel for the reuse of respirators designated as disposable and for disinfection and disposal of replaceable filter elements, according to published guidelines (160—NIOSH1991b).

III. Implementing a Personal Respiratory Protection Program

Whenever personal respiratory protection is used for protection of HCWs, an effective personal respiratory protection program must be developed, implemented, administered, and periodically reevaluated (47—ANSI1992, 151—NIOSH1987, 161—OSHA29CFR).

All HCWs who enter TB isolation rooms or who are present when cough-inducing procedures are performed on patients with known or suspected TB must be included in the respiratory protection program. Visitors, such as family members, should be required to wear respiratory protection and should be given instruction on how to use it while in TB isolation rooms. However, they need not be included in the respiratory protection program.

The number of HCWs included in the program will vary in each facility according to the size of the facility and the number of potentially infectious TB patients in the facility. The program should include enough HCWs to provide adequate care for a patient with known or suspected TB should such a patient be admitted to the facility. Respiratory protection programs in facilities with a low prevalence of TB may include only a limited number of HCWs.

Information on how to develop and manage a respiratory protection program is available in technical training courses covering the basics of personal respiratory protection, which are offered by organizations such as NIOSH, OSHA, and the American Industrial Hygiene Association. In addition, similar short courses are available from private contractors and universities.

In order to be effective and reliable, any respiratory protection program must contain at least the following elements (148—ANSI1980, 151—NIOSH1987, 161—OSHA29CFR):

1. Assignment of Responsibility: Supervisory responsibility for the respiratory protection program should be assigned to designated persons with expertise in issues relevant to the program, including occupational health.

2. Standard Operating Procedures: Written standard operating procedures should contain information on all aspects of the respiratory protection program.

3. Medical Screening: HCWs should not be assigned a task requiring use of respirators unless they are physically able to do the work while wearing the respirator. HCWs should be screened for

[1] In order to be certified, a filter is allowed a maximum penetration of 1.5 milligrams after the silica test. The total amount of dust that contacts the filter during the test is 144 mg. Therefore, a maximum allowable leakage is about 1%.

pertinent medical conditions upon employment and periodically rescreened (151—NIOSH1987). The recommended periodicity varies according to several factors but could be as infrequent as every 5 years. The screening process should begin with a general screening (e.g., a questionnaire) for pertinent medical conditions. The results can then be used to identify HCWs who need further evaluation. The extent of the evaluation should be determined by what is medically indicated. Routine testing with chest roentgenograms or spirometry is not necessary or required.

Qualified personnel should determine what medical conditions are pertinent for each type of respiratory protection device that is used in the facility. There are very few medical conditions that would preclude the use of most negative-pressure particulate respirators. HCWs who have mild pulmonary or cardiac conditions may report some discomfort with breathing when wearing negative-pressure particulate respirators, but these respirators would not be expected to have any adverse health effect on the HCW. HCWs who have cardiac or pulmonary conditions that are more severe may have more difficulty performing their duties wearing negative-pressure respirators. These HCWs may be unable to use some powered air-purifying respirators because of the added weight of these respirators.

4. Training: Respirator wearers and supervisors should receive training in the reasons for the need for wearing their respirator and the potential risks of not doing so. This training should also include at a minimum:

- The nature, extent, and specific hazards of TB transmission in their health-care facility.
- A description of specific risks of infection to each exposed individual, of any subsequent treatment with isoniazid or other chemoprophylactic agents, and of the possibility of active disease.
- A description of why engineering controls may not be adequate to eliminate the need for personal respiratory protection.
- An explanation of why a particular type of respirator has been selected for a specific location.
- An explanation of the operation, capabilities, and limitations of the respirator provided.
- Instruction in how the respirator wearer should inspect, don, fit check, and correctly wear their provided respirator.
- An opportunity for each wearer to handle the respirator, learn how to don and wear it properly (i.e., achieve a proper face-seal fit on the wearer's face) and check important parts.
- An explanation of why a particular type of respirator was chosen, how the respirator is properly maintained and stored, and the capabilities and limitations of the respirator provided.
- Instruction in how to recognize an inadequately functioning respirator.

5. Face-Seal Fit Testing and Fit Checking: HCWs should undergo fit testing to identify a respirator with an adequate fit for that HCW. The HCW should receive fitting instructions including demonstrations and practice in how the respirator should be worn, how to adjust it, and how to determine if it fits properly. The HCW should be instructed to check the facepiece fit before each use.

6. Respirator Inspection, Cleaning, Maintenance, and Storage: Scrupulous respirator maintenance should be made an integral part of the overall respirator program. This applies to both replaceable filter respirators and respirators that are classified as disposable but that are reused. Manufacturers' instructions for inspection, cleaning, and maintenance of respirators should be followed to ensure that the respirator continues to function properly.

7. Periodic Evaluation of the Personal Respiratory Protection Program: The program should be completely evaluated at least annually, and both the written operating procedures and program administration should be modified as necessary based on the results. Elements of the program that should be evaluated include work practices and acceptance of respirators, including comfort and interference with duties.

TABLE S4–1.—SUMMARY OF FEATURES OF RESPIRATORY PROTECTIVE DEVICES

	Surgical masks	Disposable, negative-pressure particulate respirators	Reusable, negative-pressure particulate respirators	Tight-fitting, positive-pressure particulate respirators
Fit test	Fit tests cannot be performed.	DM & DFM: Qualitative HEPA: Qualitative and quantitative	Both qualitative and quantitative fit tests can be performed reliably.	Both qualitative and quantitative fit tests can be performed reliably.
Fit check	Fit checks cannot be performed.	Some currently available cannot be fit checked with current technology.	Fit checks can be performed reliably.	Fit checks can be performed reliably.
Face-seal leakage [1].	10–20%	DM or DFM: 10–20% [2] HEPA: ≤10%	Half-masks: ≤10% Full-mask: <2%	<2%.
Filter leakage	25–85% [3]	DM or DFM: 0–40% [3] HEPA: <0.03% [4]	DM or DFM: 0–40% [3] HEPA: <0.03% [4]	HEPA: <0.03% [4].
Facepiece sizes	One [5]	Up to 3	Up to 3	Up to 3.

[1] For respirable aerosols (i.e., less than 10 microns).
[2] Less than 10% face-seal leakage should be achievable if more sizes become available and if fit testing and fit checking is performed.
[3] At 30 L/min over a particle size range of 1–5 microns.
[4] For aerosols 0.3 microns.
[5] Currently, only one facepiece size is generally available, tending to produce higher face-seal leakages on small facial sizes.

TABLE S4–2.—ADVANTAGES AND DISADVANTAGES OF DIFFERENT TYPES OF RESPIRATORS

Type of respirator	Advantages	Disadvantages, limitations
Negative-pressure, particulate air-purifying respirators Disposable • Dust-mist (DM) • Dust-fume-mist (DFM) • HEPA Replaceable filter Half facepiece with HEPA	General • Lightweight • Small size • Ease of maintenance • Little physiological stress to wearer • Mobility is not restricted • Simple design, easily understood by wearer Disposable respirators • Require no maintenance, cleaning or disinfecting • Low breathing resistance	General • Negative pressure may allow leakage, particularly if not fitted properly. • Negative pressure cannot be achieved if HCW is not clean-shaven. Disposable respirators • Measuring faceseal in the field may be difficult. DM and DFM respirators • May degrade if not stored properly. Replaceable filter masks • Require maintenance, cleaning, disinfection.
Positive-pressure particulate air-purifying respirators Half facepiece with HEPA filter Full facepiece with HEPA filter Loose-fitting with HEPA filter	General • Decreased inhalation resistance may make respirator more comfortable to wear • Mobility is not restricted Loose-fitting devices • No large sealing surfaces on the face allows some people with facial scars or facial hair to achieve an adequate fit.	General • Weight and bulk makes respirator more difficult to wear than non-powered respirators. • Need for continued maintenance. • May compromise communication. • May be intimidating to some patients. • Motor and airflow will create noise, which may hamper wearers ability to hear.

TABLE 3.—PROCEDURES FOR QUALITATIVE FIT TESTING AND FIT CHECKING (160—NIOSH1991b)

Fit Testing

A fit test is used to determine whether a respirator adequately fits a particular HCW. The HCW may need to be fit tested with several respirators in order to determine which respirator offers the best fit.

Qualitative (Irritant or Oderous Chemical Agent)

The wearer is exposed to an irritant smoke, isoamyl acetate vapor, or other suitable test agent easily detectable by irritation, odor, or taste. If the wearer is unable to detect penetration of the test agent, the respirator is probably tight enough. DM and DFM filters do not filter irritant smoke, therefore they may not be tested with this agent. Isoamyl acetate vapor is not suitable for fit testing particulate respirators.

Quantitative (Probe)

A quantitative fit test uses a probe inserted through the device to determine the concentration of a substance inside the respirator compared to the concentration of the substance outside the respirator.

Quantitative respirator fit testing procedures may be found in the NIOSH document, Guide to Industrial Respiratory Protection (151—NIOSH1987).

Advantages and Disadvantages

Usually, qualitative tests are fast, require no complicated, expensive equipment, and are easily performed in the field. However, most qualitative tests rely on the wearer's subjective response, so they may not be entirely reliable. The tests are unable to rank two or more adequately fitting respirators, due to the subjective nature of the test.

One advantage of a quantitative test is that it does not rely on a subjective response and therefore may be more reliable. Quantitative fitting tests require expensive equipment that can be operated only by highly trained personnel. Each test respirator must be equipped with a sampling probe to allow removal of a continuous air sample from the facepiece, so the same facepiece cannot be worn in actual service. New tests are available that allow the HCW to wear the actual respirator. Filter elements contain the probe and are changed.

Fit Checking

HCWs should check the facepiece fit of a respirator before each use. They should be instructed how to adjust the respirator and to determine if it fits properly. This may be done following the manufacturer's facepiece fitting instructions. This may also be done in one of the following ways:

Negative Pressure Test

To perform a negative-pressure fit check, the HCW dons the respirator and adjusts the straps. The HCW then occludes any portion of the respirator through which air may enter (i.e., wherever there is filter). The HCW then inhales deeply. Suction created by the inhalation should compress the respirator against the face, if the mask fits properly; no leakage should be detected.

Positive Pressure Test

To perform a positive-pressure fit check, the HCW dons the device with the straps adjusted correctly and exhales with moderate force while occluding the exhalation valve. Leakage of air at the face seal indicates an inadequate fit.

Supplement 5—Decontamination: Cleaning, Disinfecting, and Sterilizing of Patient-Care Equipment

Equipment used on patients with TB is unlikely to be involved in the transmission of the organism, although transmission by contaminated bronchoscopes has been demonstrated (162—Nelson1983, 163—Leers1980). Guidelines for cleaning, disinfecting, and sterilizing equipment have been published (164—Garner1983, —Rutala1990). The rationale for cleaning, disinfecting, or sterilizing patient-care equipment can be understood more readily if medical devices, equipment, and surgical materials are divided into three general categories (critical items, semicritical items, and noncritical items) based on the potential risk of infection involved in their use (166—Favero1991, 167—Garner1985).

Critical items are instruments such as needles, surgical instruments, cardiac catheters, or implants that are introduced directly into the bloodstream or into other normally sterile areas of the body. These items should be sterile at the time of use.

Semi-critical items are items such as noninvasive flexible and rigid fiberoptic endoscopes or bronchoscopes, endotracheal tubes, or anesthesia breathing circuits, that may come in contact with mucous membranes but do not ordinarily penetrate body surfaces. Although sterilization is preferred for these instruments, high-level disinfection that destroys vegetative microorganisms, most fungal spores, tubercle bacilli, and small, nonlipid viruses may be used. Meticulous physical cleaning before sterilization or high-level disinfection is essential.

Noncritical items are those that either do not ordinarily touch the patient or touch only intact skin. Such items include crutches, bedboards, blood pressure cuffs, and various other medical accessories. These items are not associated with transmission of pathogens, including M. tuberculosis. Consequently, washing with a detergent is usually sufficient.

Generally, critical items should be sterilized, semi-critical items should be sterilized or subjected to high-level disinfection. Noncritical items need only be cleaned with detergents or low-level disinfectants. Meticulous physical cleaning before sterilization or high level disinfection is essential.

Health-care facility policies should identify whether cleaning, disinfecting, or sterilizing an item is indicated to decrease the risk of infection. Decisions about decontamination processes should be based on the intended use of the item and not on the diagnosis of the patient for whom the item was used. Selection of chemical disinfectants depends on the intended use, the level of disinfection required, and the structure and material of the item to be disinfected.

Although microorganisms are normally found on walls, floors, and other surfaces, these environmental surfaces are rarely associated with transmission of infections to patients or HCWs. This is particularly true with organisms such as M. tuberculosis, which generally require inhalation by the host for infection to occur. Therefore, extraordinary attempts to disinfect or sterilize environmental surfaces are not indicated. If a detergent germicide is used for routine cleaning a hospital-grade, Environmental Protection Agency-approved germicide/disinfectant that is not tuberculocidal can be used. The same routine daily cleaning procedures used in other rooms in the facility should be used to clean rooms of patients who are on TB isolation, and personnel cleaning the room should follow TB isolation practices.

Glossary

This glossary contains many of the terms used in the guidelines, as well as others which are frequently encountered by those who work in TB infection control programs. The definitions given are not dictionary definitions but are the ones most applicable to usage relating to TB.

Acid-Fast Bacilli—Bacteria that retain certain dyes even when washed with an acid solution. Most acid-fast organisms are mycobacteria. When seen on a stained smear of sputum or other clinical specimen, a diagnosis of TB should be considered; however, the diagnosis is not confirmed until a culture is grown and identified as M. tuberculosis.

Acquired Drug Resistance—Resistance to one or more antituberculosis drugs which develops while a patient is on therapy, usually the result of nonadherence on the part of the patient or inadequate therapy prescribed by a health care provider.

Adherence—Refers to the completion by patients of all aspects of the treatment regimen as prescribed by the medical provider. Also refers to HCWs and employers following all guidelines pertaining to infection control.

Aerosol, Aerosolization—In TB, it refers to the infectious droplet nuclei that are expelled from a person which can be transmitted to other people.

AIA—The American Institute of Architects, a professional body that develops standards for building ventilation.

Air Changes—Air flow quantity to a space measured in terms of the room volume. i.e., volume of air delivered÷room volume. Usually expressed as number of air changes per hour.

Alveoli—The small air sacs in the lungs which lie at the end of the bronchial tree. The site where carbon dioxide is replaced by oxygen in the lungs, and the site where TB infection usually begins.

Anergy—The inability of a person to react to skin-test antigens because of defects in the immune system, even if the person is infected with the organisms tested.

Anteroom—A small room located between an isolation room and a corridor that acts as an airlock, preventing escape of room contaminants into the corridor.

Ashrae—The American Society of Heating, Refrigerating and Air Conditioning Engineers, a professional body that develops standards for building ventilation.

Asymptomatic—Showing or causing no symptoms.

Bactec®—One of the most widely used radiometric methods to detect early growth of mycobacteria in culture. It provides rapid growth (average of 9 days), specific identification of M. tuberculosis (5 days), and rapid drug susceptibility testing (6 days).

Bactericidal—Capable of killing bacteria. Isoniazid and rifampin are the two most potent bactericidal antituberculosis drugs (see Bacteriostatic).

Bacteriostatic—Capable of preventing bacterial growth but not necessarily capable of killing bacteria. Drugs such as ethambutol and para-aminosalicylic acid are primarily bacteriostatic (see Bactericidal).

BCG (Bacillus of Calmette and Guerin)—A TB vaccine widely used in some parts of the world.

Booster Phenomenon—Seen when an individual with infection does not react to tuberculin because his/her body's cell responses to tuberculin have gradually waned over the years. An initial tuberculin test may stimulate (boost) the immune system so that the next test will be positive. This phenomenon is important in infection control in order to distinguish between recent converters and people who have been infected for a long time, and determine if in fact transmission is taking place. Although the booster phenomenon may occur at any age, it is most frequent among persons over 55.

Bronchoscopy—A procedure for examining the respiratory tract by inserting an instrument (bronchoscope) through the mouth or nose into the trachea. Diagnostic specimens can be obtained during bronchoscopy.

Capreomycin—An injectable second-line antituberculosis drug related to streptomycin. Used primarily for drug-resistant TB.

Cavity—A hole in the lung resulting from destruction of pulmonary tissue. May be caused by TB, but also by other pulmonary infections and conditions. TB patients with cavities in their lungs are said to have "cavitary disease" and are often more infectious than patients without cavities.

Chemotherapy—Treatment of an infection or disease by means of oral or injectable drugs.

Chest Radiograph—In patients showing signs or symptoms of TB, a radiograph of the chest is taken to view the respiratory system. Abnormalities, such as lesions or cavities in the lungs and enlarged lymph nodes, may indicate the presence of TB.

Contact—An individual who has shared the same air as a person with infectious TB for a sufficient amount of time so that there is a probability that transmission of TB has occurred.

Conversion, PPD—See PPD TEST CONVERSION.

Culture—The process of growing bacteria in the laboratory so that organisms can be identified.

Cycloserine (CS)—A second line oral antituberculosis drug, used primarily for treating drug-resistant TB and disease caused by nontuberculous mycobacteria.

Dilution Ventilation—An engineering control technique to dilute and remove air-borne contaminants by the flow of air into and out of the area. Air that contains droplet nuclei is removed and replaced by air that is free of contaminants. If the flow is sufficient, droplet nuclei become dispersed, and their concentration in the air is diminished.

Directly Observed Therapy—An adherence-enhancing strategy in which each dose of medication is ingested by the patient under the supervision of a health care worker.

DNA Probe—A technique that allows precise identification of mycobacterium such as M. tuberculosis and M. bovis that are grown in culture. The identification can be completed in as little as two hours.

Droplet Nuclei—Microscopic particles (1 to 5 microns in diameter) produced when a person coughs, sneezes, shouts, or sings. The droplets can carry tubercle bacilli and remain in the air by normal air currents in the room.

Drug Susceptibility Pattern—The antituberculosis drugs to which a tubercle bacillus is susceptible and those to which it is resistant based on susceptibility tests.

Drug Susceptibility Tests—Laboratory tests which determine if the tubercle bacilli cultured from a patient is susceptible or resistant to various antituberculosis drugs.

Ethambutol—An oral antituberculosis drug sometimes used with isoniazid and/or rifampin.

Ethionamide—A second line oral antituberculosis drug.

Exposure—The condition of being subjected to something, such as infectious agents, which may have a harmful effect. A person exposed to TB does not necessarily become infected (see Transmission).

Fluorochrome Stain—A technique for staining a clinical specimen with dyes which fluoresce, in order to perform a microscopic examination (smear) for mycobacteria. This technique is preferable to other staining techniques because the mycobacteria can be easily seen.

Fomites—Linens, books, dishes, or other objects used or touched by a patient. They are *not* involved in the transmission of TB.

Gastric Aspirates—Procedure sometimes used to obtain mycobacteria for culture when a patient cannot produce adequate sputum. A tube inserted into the stomach is used to recover any bacilli which may have been coughed up and then swallowed. This procedure is particularly useful for diagnosis in children.

HEPA (High-Efficiency Particulate Air) Filter—Specialized filter that is capable of removing 99.97% of particles 0.3 microns in diameter. It may be of assistance in control of TB transmission. Requires expertise in installation and maintenance.

Human Immunodeficiency Virus or HIV Infection—Infection with the virus that causes the acquired immunodeficiency syndrome (AIDS). It is the most potent risk factor for progression from TB infection to active TB.

Immunosuppressed—Persons with severe cellular immunosuppression (e.g., HIV-infected or organ transplant patients on immunosuppressive therapy). These patients are at greatly increased risk for developing TB once infected. There are no data available on whether they are also at risk of becoming infected with M. tuberculosis, if exposed.

Induced Sputum—Sputum obtained from a patient unable to cough up a spontaneous specimen. The patient inhales a mist of saline (salt water), which stimulates a cough from deep within the lungs.

Induration—The area of swelling that surrounds the site of injection of tuberculin. The diameter of the indurated area is measured (in millimeters) 48–72 hours after the injection and is recorded as the result of the PPD test.

Infection—The condition in which organisms capable of causing disease (e.g., M. tuberculosis) multiply within the body and cause a response from the host's immune defenses. Infection may or may not lead to clinical disease.

Infectious—Capable of causing infection. In TB, a person is infectious only if he/she has clinically active TB. TB patients whose sputum is AFB smear positive are often infectious.

Intermittent Therapy—Therapy given on a twice-weekly or three-times weekly basis under direct supervision of a health worker.

Intradermal—Within the layers of the skin.

Isoniazid (INH)—An oral drug either used alone to treat TB infection or in combination with one or more other drugs to treat TB disease.

Kanamycin—Injectable secondary antituberculosis drug related to Streptomycin. It is used primarily for treatment of streptomycin-resistant TB.

Local Exhaust Ventilation—Used as a source control technique to capture and remove air-borne contaminants by enclosing the contaminant source or by means of a hood placed very near the contaminant source.

Mantoux Test—A tuberculin test given by injecting a measured amount of liquid tuberculin into the dermis (second layer of the skin) with a needle and syringe. It is the most reliable and best standardized technique for tuberculin testing (see Tuberculin Skin Test and Purified Protein Derivative Test).

Mixing—The degree to which air supplied to a room mixes with the air already in the room. Generally expressed in terms of a Mixing Value. A low value (i.e., 1) indicates good mixing; a higher value (i.e., 10) indicates poor mixing.

Mycobacterium Tuberculosis Complex—The complex of mycobacterial species that causes TB; it includes M. tuberculosis, M. bovis, and M. africanum.

Negative Pressure—A term used to describe the relative air pressure difference between two areas of the health-care facility. Air will flow from the higher pressure area into the lower pressure area.

Para-Aminosalicylic Acid (PAS)—An oral antituberculosis drug used for drug-resistant TB.

Pathogenesis—The natural development of a disease in the body without intervention (i.e., without treatment).

Portable Filtration Units—Portable devices that provide contaminant dilution by recirculating air within a room through a HEPA filter.

Positive PPD Reaction—A reaction to the purified protein derivative (PPD) test that suggests the individual tested is infected with tubercle bacilli. Determination of the reaction is largely dependent on interpretation by the person evaluating the test, given the patient's or HCW's medical history and risk factors.

Preventive Therapy—Chemotherapy of TB infection, primarily used to prevent progression of infection to clinically active disease.

Primary Drug Resistance (PDR)—Resistance of bacteria to drugs which exists before the beginning of treatment (see Acquired Drug Resistance).

Primary Drugs—Term sometimes used to refer to the most commonly used antituberculosis drugs: isoniazid, rifampin, pyrazinamide, ethambutol, and streptomycin.

Purified Protein Derivative (PPD)—A type of purified tuberculin preparation derived from old tuberculin (OT) and developed in the 1930's. The standard Mantoux test uses 5 TU (tuberculin units) of PPD.

Purified Protein Derivative (PPD) Test—A method to determine whether a person is infected with Mycobacterium tuberculosis. A small dose of the antigen from M. tuberculosis is injected just beneath the surface of the skin and the area is examined 48–72 hours after the injection. A positive reaction is measured according to the size of the induration. The classifications for positive reactions depend on the patient's medical history and various risk factors (see Mantoux Test).

Purified Protein Derivative (PPD) Test Conversion—Growth in induration within a two-year period after an initial negative reaction with a difference of 10 or more millimeters of induration. Such "conversion" may represent new infection which is associated with a high risk of developing disease, or may occur as a result of the Booster Phenomenon.

Pyrazinamide (PZA)—An oral antituberculosis drug. It is important as a primary drug in short-course treatment regimens.

Radiometric Methods—A rapid method for culturing TB allowing identification of M. tuberculosis in 5–10 days.

Recirculation—Ventilation where all or most of the air exhausted from an area is returned to the area.

Regimen—Any particular treatment plan for TB specifying which drugs are used, in what doses, according to what schedule, and for how long.

Registry—A record-keeping method to collect clinical, laboratory, and radiographic data on TB or any other pathological field so the data can be organized and properly processed to be made available for epidemiologic study.

Resistance—The ability of some strains of bacteria (including M. tuberculosis) to grow and multiply even in the presence of certain drugs which normally kill them. (Such strains are referred to as "drug resistant strains.")

Rifampin—An oral antituberculosis drug which when used along with isoniazid provides the basis for short-course therapy.

Secondary Drugs—Antituberculosis drugs used in difficult cases (such as for retreatment or when there is resistance to primary drugs). Examples are cycloserine, ethionamide, capreomycin.

Single Pass Ventilation—Ventilation in which 100% of the air supplied to an area is exhausted to the outside.

Smear (AFB Smear)—A laboratory technique for visualizing mycobacteria. The specimen is smeared onto a slide and stained, and then placed under the microscope for examination. Smear results should be available within 24 hours. A large amount of mycobacteria usually indicates infectiousness; however, a "positive" result is not definitive for TB.

Source Case—An infectious individual who has transmitted tubercle bacilli to another person or persons.

Source Control—Control of a contaminant at the source of generation rather than permitting it to enter the general work space.

Specimen—Any body fluid, secretion, or tissue sent to the laboratory where smears and cultures for tubercle bacilli will be performed. The specimen may consist of sputum, urine, spinal fluid, material obtained at biopsy, etc.

Sputum—Material coughed up from deep within the lungs. If a patient has a pulmonary infection, an examination of the sputum by smear and culture can indicate what organism is responsible for the infection. It should not be confused with saliva or with nasal secretions.

Sputum Smear Positive—AFB are visible after staining when viewed under a microscope. Individuals with sputum smear positive for AFB are considered more infectious than those with smear-negative sputum.

Streptomycin (SM)—The most commonly used injectable antituberculosis drug.

Symptomatic—Having symptoms which may be clues to the presence of TB or another disease (see Asymptomatic).

Transmission—The spread of an infectious agent like Mycobacterium tuberculosis from one individual to another. The duration and intensity of exposure to TB is directly related to the likelihood that transmission will occur and a person will become infected (see Exposure).

Treatment Failures—Refers to individuals who fail to improve even after a course of chemotherapy is begun, and to individuals whose disease worsens after having initially improved.

Tubercle Bacilli—The term often used to refer to the organism Mycobacterium tuberculosis.

Tuberculin Skin Test—A method to determine whether a person is infected with Mycobacterium tuberculosis. A small dose of the antigen from M. tuberculosis is injected just beneath the surface of the skin and the area is examined 48–72 hours after the injection. A positive reaction is measured according to the size of the swelling. The classifications for positive reactions depend on the patient's medical history and various risk factors (see Mantoux Test, PPD Test).

Tuberculosis (TB)—A clinically apparent active disease process caused by Mycobacterium tuberculosis complex (usually M. tuberculosis or, rarely, M. bovis or M. africanum).

Tuberculosis Case—A particular instance of clinically active TB. It is sometimes used incorrectly to designate the individual with the disease.

Tuberculosis Infection—A condition in which living tubercle bacilli are present in the body, without producing clinically active disease. Although the infected individual has a positive tuberculin reaction, he/she has no symptoms related to the infection and is not infectious. However, the infected individual remains at lifelong risk of developing disease unless preventive therapy is given.

Tuberculosis (TB) Isolation Precautions—Infection control procedures that should be applied when persons with known or suspected infectious TB are hospitalized or residing in other inpatient facilities. These precautions include the use of a private room with negative pressure in relation to surrounding air and removal of air from the room directly to the outside. Not the same as "respiratory isolation" which calls for a private room, but does not require negative pressure and exhaust of room air to the outside.

Two-Step Testing—A procedure used among people who receive tuberculin skin tests periodically (such as health care workers) to reduce the likelihood of mistaking a boosted reaction for a recent infection. If the initial tuberculin test is classified as negative, a second test is repeated one week later. If the reaction to the second test is positive, it probably represents a boosted reaction. If the second test result remains negative, the person is classified as being uninfected.

Ultraviolet (UV) Lamps—Lamps that destroy germs by emitting radiation predominantly at a wavelength of 254 nanometers (intermediate between visible light and X-rays). They can be used in ceiling or wall fixtures or within air ducts of ventilation systems. The effectiveness in killing tubercle bacilli for infection control in health-care facilities is not yet proven.

Ultraviolet Germicidal Irradiation (UVGI)—A form of radiation intermediate between visible light and X-rays. UVGI is effective in killing many bacteria, including tubercle bacilli.

Virulence—Refers to the ability of a microorganism, such as M. tuberculosis, to produce serious disease. M. tuberculosis is a virulent organism. Some nontuberculous mycobacteria are virulent (e.g., M. kansasii), while others (e.g., M. gordonae) are not. (Pathogenicity is a related, though not identical, concept.)

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Food Safety and Inspection Service

9 CFR Parts 317 and 381

Mandatory Safe Handling Statements on Labeling of Raw Meat and Poultry Products; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR 317 and 381

[Docket No. 93–012F]

RIN 0583–AB67

Mandatory Safe Handling Statements on Labeling of Raw Meat and Poultry Products

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 make safe handling instructions mandatory on all raw meat and poultry product labeling. The handling instructions include a rationale statement and address safe storage of raw product, prevention of cross-contamination, cooking of raw product, and handling of leftovers. The rule provides additional safeguards to protect consumers from exposure to possible bacterial contaminants found in raw meat and poultry products. This action is being taken in an effort to reduce the risk of foodborne illness.

DATES: Effective Date: October 15, 1993. However, pork products other than those described in 318.10(a)(1) will not be required to comply until January 15, 1994.

FOR FURTHER INFORMATION CONTRACT: Patrick J. Clerkin, Director, Field Operations Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2537.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

When the Agency published the interim rule, the Agency had determined that the rule was not a major rule under Executive Order 12291. Since that time, President Clinton has signed Executive Order 12860 which revokes Executive Order 12291 and requires, among other things, that agencies determine whether a regulatory action is significant. A significant regulatory action is one that is likely to (1) have an annual effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order.

A preliminary analysis was published for comment in the preamble of the interim rule (58 FR 43478, August 16, 1993). Most comments addressed the cost of the rule.

The analysis assumes all commuted product must be labeled by October 15, 1993. This final rule incorporates two major changes from the interim rule that should greatly reduce the costs of complying with safe handling requirements. The first modification allows for point-of-purchase "leaflets" for most products during the first 6 months after the effective date of October 15, 1993. Until April 15, 1994, only raw or partially-cooked commuted products such as ground beef, ground poultry or patties will be required to have the safe handling instructions affixed to each individual consumer package. A second major change provides for a single set of instructions for both meat and poultry at both retail and institution markets. The interim rule specified four different sets of instructions.

An analysis of comments on the projected costs and benefits taking into consideration the above modifications and the new Executive Order follows.

Risk/Benefits Analysis

In criticizing the benefit analysis, several commenters pointed to the statement that "The Department is not aware of any quantitative estimate of effectiveness." Taking this statement out of context misses the point. The net benefit analysis was constructed to show that while the exact level of effectiveness is unknown, safe handling labels do not need to prevent a high level of foodborne illness to result in net societal benefits.

It is the nature of health and safety regulations that benefits accrue to society in general while costs are borne by specific businesses or other entities. This situation normally leads to cases where costs can be quantified easier than benefits.

Retail Costs

There are three central cost issues that will determine the impact on retail stores. These are the compatibility of existing scale/wrapping systems, the increased cost for labels, and the labor costs for applying labels. These three costs are discussed separately but interrelated because the cost of labels and labor depend on whether or not the existing equipment is compatible. Based on the revisions to the rule and comments on the preliminary analysis, the Department estimates that retail stores prepare approximately 10 billion packages annually, and that an estimated 1 billion or 10 percent are for comminuted product.

Use of Existing Scale/Meat Wrapping Systems

The Preliminary analysis assumed that retail stores would have the option of applying a second auxiliary label or of increasing their label size to combine weight and price information with safe handling instructions. While some retail companies indicated their equipment could handle a larger label, others stated that they would not be able to increase the amount of printing on the labels or the size of the label generated without retooling or replacing scale/meat wrapping systems. Other firms indicated they used equipment that could print the safe handling instructions, but could not print the symbols. A large retail firm suggested they would upgrade their equipment rather than apply separate labels. Given the 6-month delay for labeling non-comminuted product, the Department anticipates that this will be the response of most large retail chains that cannot use existing equipment to apply a single label. The Department expects the majority of retail stores to initially use point-of-purchase information for non-comminuted product and use separate pressure-sensitive labels for comminuted product and then phase in new equipment that can apply safe handling instructions along with net weight and price information.

Labor Costs

A large number of comments noted that the Department's preliminary analysis did not include labor costs associated with applying pressure-sensitive labels to retail packages. These comments are correct. If firms can use existing equipment, there are no additional labor costs. The comments suggested that for firms that must use auxiliary labels, there are ways to minimize costs. While come comments suggested that applying the label would take from 2 to 4 seconds per label, a rate of from 15 to 30 per minute, a retail chain with almost 100 supermarkets commented that labels could be applied at a rate of 100 per minute using retail hand label guns. Most estimates of labor costs per package ranged from $.0075 to $.0175 per label. However, none of these estimates were based on the use of label application guns.

The Department believes that most retail stores will expend upfront capital costs rather than experience recurring labor costs. The 6-month delay for most products will allow for modifying equipment or phasing in new equipment, if needed. Small retail stores are more likely to experience some labor costs but the option of hand-held labeling guns should minimize such costs. The Department anticipates that stores will utilize point-of-purchase materials that will minimize any labor costs.

Cost Per Label

The preliminary analysis assumed that all raw product already includes some form of commercially prepared label and that the incremental cost of including the safe handling instructions will increase the total per label cost by $.0025 to $.005. One large retail chain commented that printing the safe handling instructions as part of their price labels would double their label costs from $.0025 to $.005, the same estimate used in the preliminary analysis. For firms that indicated they would require separate labels, the most frequent response was that the labels would cost $.01 each. The preliminary analysis estimated that the cost of an additional label would range from $.01 to $.025. In general, the comments supported this estimate with more comments suggesting the lower end of the range. There were comments, including one from an official at the Small Business Administration, suggesting that some retail firms were paying far more for pressure-sensitive labels. Discussions with label manufacturers indicate that the lower prices are available for even small quantities.

The cost per label will be a recurring cost. Comments suggest that the large retail chains will utilize equipment, especially by April 15, 1994, that will keep the recurring cost in the range of $.0025 to $.005 per label. Larger retail chains most likely account for more than 80 percent of the packages. If 80 percent of the packages (8 billion) have recurring costs of $.00375 (midpoint of $.0025 and $.005) and 20 percent (2 billion) have recurring costs of $.01 per package, then 10 billion retail packages have recurring costs of $50 million per year.

The labor costs for applying 2 billion labels using label guns would be $3.2 million (160 staff years at an average salary of $20,000 per year). Thus, total recurring retail costs are estimated at $53.2 million.

Number of Packages

The preliminary analysis was based on an estimate that consumers purchase approximately 15 billion retail packages of fresh meat and poultry products annually. Comments raised the question of whether the 15 billion is an estimate of total packages or packages that are packed, wrapped, and labeled at retail stores. The 15 billion figure is an estimate of total retail packages of raw product purchased at retail. The Department is aware the most poultry is packed and labeled at processing plants. Comments provided an estimate that there are approximately 4.5 billion packages of raw poultry sold annually at retail. Given that some raw meat is also packed at processing plants, it is reasonable to assume that the 15 billion estimate can be separated into 10 billion packages labeled at retail and 5 billion packages labeled at processing plants.

As discussed earlier, the Department estimates that 10 percent, or 1 billion, of the packages labeled at retail stores are comminuted product. Using the same 10 percent estimate, an estimated 500 million packages labeled at processing plants are comminuted products. Comminuted products labeled at processing plants include boxes of frozen beef patties, fresh and frozen chubs of ground beef or ground poultry, and more recently, tray-packed, fresh-ground poultry.

Retail Costs Versus Manufacturer Costs

Several manufacturers commented that the Department based its cost estimate almost totally on the cost associated with compliance at the retail level, and that little consideration was given to economic impact on the manufacturer. The Department recognizes that the analysis appeared to focus on retail costs. Actually, the intent was to focus on recurring costs, recognizing that processors would most likely make permanent modifications to labels. Processors would, therefore, face larger upfront, one-time costs, but would not experience recurring costs. Both modifications, a single set of instructions and the 6-month delay for non-comminuted product should significantly reduce costs to processors.

The Department estimates that there are somewhere between 50,000 and 100,000 labels approved for use by processors that are affected. The difficulty in estimating the number of labels and products arises because of the rapid growth of frozen snacks and entrees that have detailed heating and preparation instructions but frequently no clear differentiation between what is fully cooked and what is partially cooked. This rule will help consumers separate fully cooked from partially-cooked product, a distinction the Department believes should have been clarified long ago.

The cost of revising a label varies widely depending on the type of label, the number of colors affected and the printing process used. Adding safe handling instructions is the lowest cost type of modification because it involves single color printing. The Department also is aware that many of the labels affected, such as frozen entrees, are modified frequently in the normal course of doing business. Thus, in many cases, the 6-month delay will allow for the addition of safe-handling instructions as part of an already planned revision. Given the above considerations, the Department considers an average cost of $1,000 per label to be a reasonable estimate for the average label modification cost. Thus, processors would experience one-time, upfront costs from $50 to $100 million.

The Department expects processors to use pressure-sensitive labels only for a brief period until permanent changes are made. Many processor comments pointed out that pressure-sensitive labels do not work equally well on all products. Providing an additional 6 months for permanent changes should eliminate the problem.

Summary of Analysis of Comments on Cost

After reviewing the comments on the preliminary analysis, the Department has concluded that most costs will be one-time, upfront costs while benefits will recur annually. Processing plants will make permanent modifications to existing labels rather than continue to apply pressure-sensitive labels. Processing plants will most likely have to apply some pressure-sensitive labels to comminuted products until permanent changes can be made. Large retail chains can be expected to modify equipment to handle a larger single label when their existing equipment is not compatible. Small retail firms should be able to procure labels for $.01 each and apply them efficiently using retail label guns.

Since the public health benefits are recurring, it is necessary to compare annual benefits with annual recurring costs plus annualized nonrecurring costs. To make such comparisons, the Department used a 20-year time period, the time period used to compare costs and benefits of nutrition labeling. The Department has estimated recurring costs to retailers of $53.2 million per year ($50 million for labels and $3.2 million for labor). The annualized costs

of processor label modifications would range from $6 to $12 million per year using a 10 percent cost of capital. Two retail comments provided per store estimates to upgrade existing store equipment or replace equipment. These estimates were approximately $6,000 and $9,000 per scale. Thus, it would take an estimated $144 to $216 million to provide compatible scales in each of the 24,000 supermarkets with annual sales over $2.5 million. The annualized costs of retail equipment would range from $17.3 to $26.9 million. In summary, the estimated annual costs would be:

Type of cost	Millions
Recurring Labels	$50.0
Recurring Labor	3.2
Processor Label Modification	6.0–12.0
Retail Equipment	17.3–26.9
Total	76.5–92.1

As presented in the preliminary analysis, estimated annual benefits will range from $77.6 to $86.6 million if the safe handling instructions prevent only 2 percent of associated foodborne illness. At 3 percent effectiveness, the annual benefits range from $116.4–$129.9 million.

Executive Order 12778

This interim 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) from imposing any marking, labeling, packing, or ingredient requirement on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or 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 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.

No retroactive effect will be given to this rule. 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 381, Subpart W, must be exhausted prior to any judicial challenge of the application of the provisions of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The rule affects a substantial number of small entities, but the economic impact on such small entities will not be significant.

The rule affects both retail stores and inspected establishments. In 1991, USDA estimated there were 253,000 foodstores in the United States. These stores are categorized as follows:

Supermarkets (Sales >$2.5 million each)	23,813
Superettes (Sales <$2.5 million each)	94,647
Convenience Stores	51,700
Specialty Stores	82,895
Total	253,055

Most of the small businesses affected will be superettes and specialty stores, such as meat markets, butcher shops, and locker plants. The specialty store category includes a large number of small businesses that do not sell meat and poultry products, e.g., confectionery stores. Most convenience stores do not sell raw meat and poultry products.

The Department has reviewed all comments pertaining to small business and particularly those received from the Office of Chief Counsel for Advocacy, U.S. Small Business Administration. The Department recognizes that small retail firms will experience the greatest relative ongoing costs because they may not be able to afford new or modified equipment that can minimize costs. With regard to comments that pressure-sensitive labels can cost $.05 or more, the other comments are conclusive that such labels are available at far lower costs. Other comments suggest that labor costs can be minimized by using label application guns.

The public health risks do not allow for alternative small business considerations. At least one of the recent incidents described in the interim rule involved ground beef sold through a small market in a small community.

Background

Introduction

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) direct the Secretary of Agriculture to maintain meat and poultry inspection programs designed to assure consumers that meat and poultry products distributed to them (including imports) are wholesome, not adulterated, and properly marked, labeled, and packaged.

Section 2 of the FMIA (21 U.S.C. 602) and section 2 of the PPIA (21 U.S.C. 451) state that unwholesome, adulterated, or misbranded meat or meat food products and poultry products are injurious to the public welfare, destroy markets for wholesome, not adulterated, and properly marked, labeled, and packaged products, and result in sundry losses to producers and processors of meat and poultry products, as well as injury to consumers. Therefore, Congress has granted the Secretary authority to regulate meat, meat food products, and poultry products to protect consumers' health and welfare. Subsection 1(n)(12) of the FMIA (21 U.S.C. 601(n)(12)) and Subsection 3(h)(12) of the PPIA (12 U.S.C. 453(h)(12)) state that the term "misbranded" applies to any product if it fails to bear, directly thereon or on its container, as the Secretary may by regulations prescribe, the inspection legend, and unrestricted by any of the foregoing, such information as the Secretary may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition. Section 7(d) of the FMIA (21 U.S.C. 6076(d)) states: "No article subject to this title shall be sold or offered for sale by any person, firm, or corporation, in commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Secretary are permitted." The PPIA contains similar language in section 8(c) (21 U.S.C. 457(c)).

FSIS carries out its responsibility under these laws by inspecting meat and poultry products and facilities at federally inspected establishments. As part of the inspection, FSIS routinely monitors for the presence of microbial contamination in commercially cooked or processed ready-to-eat meat and

poultry products to assure that they are safe. The samples are tested in FSIS laboratories. After product leaves the federally inspected establishment, FSIS compliance officers monitor the product as it is handled, sold, and transported in commerce. State and local food regulatory agencies also regulate and inspect grocery stores restaurants, and other establishments that sell food. The report incidence of unsafe products reaching consumers is low.

In 1972, the American Public Health Association, individual consumers, and six other public health and consumer interest groups brought suit in the U.S. District Court for the District of Columbia Against the U.S. Department of Agriculture alleging that labels placed on meat and poultry products were false and misleading because they failed to warn consumers against the dangers of food poisoning caused by Salmonella and other bacteria in such products. The Court of Appeals affirmed the District Court's order dismissing the action, and ruled that the Secretary of Agriculture did not abuse his discretion by choosing to undertake a consumer education program instead of requiring labeling instructions for meat and poultry products. Since that ruling, USDA has conducted a massive and increasingly targeted food safety campaign to inform consumers about safe handling and cooking of meat and poultry products. FSIS has offered a toll-free nationwide hotline, staffed by food safety specialists, and conducted campaigns, directed at such specialized audiences as food handlers, institutions, health professionals, and at-risk populations, as well as food handlers in the home. Additionally, FSIS has permitted the voluntary labeling of poultry products with safe handling instructions since 1987. FSIS does not monitor participation in voluntary labeling; however, on trade association has said that 75 percent of its members offer handling instructions on their labels.

New Policy Direction

In recent years, FSIS has been aware that a growing percentage of the U.S. population consists of persons lacking experience in food preparation and knowledge of safe food handling and storage methods. Studies of foodborne illness outbreaks have repeatedly shown improper food handling to be the frequent cause of foodborne illnesses. Improper cooling of cooked foods has been ranked as the leading factor. Other factors cited included inadequate cooking, cross-contamination, and inadequate reheating.

Studies of consumer knowledge and practices indicate that a significant number lack basic food safety information and skills, particularly with respect to the relationship between temperature and foodborne illness. A nationwide study done in 1972 (Jones and Weimer) classified 63 percent of a national sample as "high risk" based on the use of one or more food handling practices identified by the researchers as unsafe.[1] A study by Woodburn and VanDeRiet, published in 1985, concluded that cross-contamination between raw and cooked foods, inadequate cooking, and unsafe holding temperatures were frequent food handling practices in the home.[2] A 1990 study of the knowledge of food safety and home food preparation practices in 2,000 randomly selected households (Williamson, Gravani and Lawless) showed that: (1) 18 percent were not concerned or not sure about leaving cooked meat out at room temperature for over 4 hours; (2) 68 percent would leave a large quantity of cooked stew in the pot it was cooked in or would store it in a deep container; (3) 29 percent would leave cooked chicken on the counter to cool before refrigerating it; and (4) 23 percent would thaw hamburger on the countertop at room temperature.[3]

Information from the Center for Disease Control (CDC) revealed that: (1) Undercooking was a factor in 108 of 345 (31.3) percent home outbreaks of foodborne illness that occurred between 1973 and 1982 (data include all foods); and (2) cooking foods ahead, i.e., 12 hours or more before serving, was a factor in 12.8 percent of the home outbreaks.

While the Agency has long been committed to a program of consumer education to help prevent foodborne illness, as exemplified by its distribution of publications for consumers and its Meat and Poultry Hotline, it has become convinced of the need for more direct methods of placing food safety information in the hands of consumers. Thus, Agency officials in early January began to advocate in their speeches and writings that the mandatory safe handling instructions on the labeling of meat and poultry products was a necessary component of a program to combat foodborne illness.

The Agency's new policy direction gained additional impetus following the mid-January 1993 outbreaks of a severe food poisoning that led to four deaths among approximately 500 confirmed cases in Washington, Idaho, California, and Nevada. The outbreaks were linked to the pathogenic bacterial strain *E. coli* 0157:H7. Because most of the cases were traceable to undercooked hamburgers served at a fast-food restaurant chain, Federal and local authorities have intensified their regulatory activities. In recent months, the Department became aware of nine separate incidents where *E. coli* 0157:H7 has been the cause of illness or death or at least suspected of being the cause. The incidents led the Department to conclude that it was time to require safe handling information on raw meat and poultry products and require it immediately via the interim final rulemaking process. On August 16, 1993, FSIS published in the **Federal Register** an interim rule (58 FR 43478) that amended the Federal meat and poultry products inspection regulations to make safe handling instructions mandatory on all raw meat and poultry product labeling.

Interim rule

The interim rule mandated the inclusion of safe handling instructions on the labels of certain meat and poultry products along with a rationale statement to indicate the reason why it is important to follow such handling instructions. Generally, the rule required safe handling instructions for those products that are uncooked or have not been otherwise further processed to make them ready-to-eat. The Department has established required cooking temperatures for certain beef, poultry, and patty products. These requirements are set forth at 9 CFR 318.17, 381.150, and 318.23, respectively. The Department has also described at 9 CFR 318.10(a) a category of pork products that are customarily well cooked before service to consumers. The Department has also established proceeding requirements for the curing or other treatment of certain meat products to control microbial activity. Some of these products are identified in part 319 of the meat inspection regulations. The uncooked products and products that have not been otherwise further processed so as to render them ready-to-eat are considered to be at risk of microbial contamination and warrant the application of safe handling labels. The interim rule generally provides that products not receiving a heat treatment that would be lethal to pathogens must bear the label. Pork products are an exception. While a class of clearly raw products is identified, some other products that are not included have not received a lethal heat treatment. Such products are among products listed at 9

[1] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

[2] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

[3] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

CFR 318.10(b) and among products described at 9 CFR 319, Definitions and Standards of Identity and Composition. Many of those products are well cooked and can be considered ready-to-eat. Others receive no lethal heat treatment and may not be pathogen free. While some of these products are required to bear safe handling instructions under this final rule, FSIS will evaluate its policies and regulations governing all these products.

The interim rule provided for the use of two different rationale statements depending on where the product is labeled. One rationale statement was designed for use on products fully labeled at the federally inspected establishments and a second rationale statement was designed for use on products labeled at retail. The latter reflects the fact that the product has been further processed without continuous inspection.

The interim rule required the following four safe handling statements for use on the label of products distributed to consumers: (1) Keep refrigerated or frozen. Thaw in refrigerator or microwave; (2) Keep raw [meats or poultry] separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw [meat or poultry]; (3) Cook thoroughly; and (4) Refrigerate leftovers within 2 hours. In addition, the graphic illustrations depicting the essence of each message shall be displayed next to the statement.

In addition, the interim rule required the following four safe handling statements for use on the label of products distributed to institutions: (1) Keep refrigerated or frozen. Thaw in refrigerator or microwave; (2) Keep raw [meats or poultry] separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw [meat or poultry]; (3) Cook thoroughly; and (4) Keep foods hot at 140 °F or higher. Immediately after service, refrigerate leftovers. In addition, the graphic illustrations depicting the essence of each message shall be displayed next to the statement.

The interim rule required that each of the four safe handling instructions appear on the product label. The rule allowed safe handling instructions to be added to labels by the manufacturer and to be approved under the provisions of generic label approval since the regulations prescribe the exact language of the safe handling instructions.

The interim rule also required that safe handling instructions accompany each product and appear either on the principal display panel or the information panel of the product label. The safe handling information could be supplemented by point-of-purchase materials, videos, live demonstrations or other media. Examples of point-of-purchase materials to display safe handling information may include large placards (e.g., wall posters, signs, aisle hangers), pamphlets, brochures, videos, and notebooks.

The interim rule exempted products intended for further processing by an inspected establishment from mandatory safe handling labeling requirements. Since products for further processing by another federally inspected or State inspected establishment will not be available to consumers or food service institutions, FSIS believed it was unnecessary to require safe handling instructions on such packaging.

A discussion providing a summary of the comments received on the interim rule and relevant changes made in the final rule follows: The comments and changes do not affect the Department's determination that immediate action is necessary to protect public health. Since the changes made in the final rule do not establish new requirements for immediate implementation, but provide affected businesses with additional flexibility not available under the interim rule they relieve restrictions. Further, good cause exists to make this rule effective less than 30 days after publication in order to increase information to consumers and others which will help reduce the risk of foodborne illness caused by unsafe handling and cooking practices.

Discussion of Comments

The FSIS Hearing Clerk received 357 comments on the interim rule. Commenters included consumers, representatives of consumer and other interest groups, State meat and poultry inspection officials, university officials, representatives and associations of retail stores, representatives and associations of official meat and poultry establishments, an association of exporters, representatives of farm bureaus and farm cooperatives, consultants to the food industry, label manufacturers, a Small Business Administration official, a Food and Drug Administration (FDA) official, State health agency officials, members of Congress, and others.

The following discussion of comments follows the general structure of the interim rule. General concerns are addressed in the context of specific features of the rule. Where the concerns can not be logically addressed in the context of specific sections of the rule, they are presented under a "Miscellaneous Issues" section. Changes made in the final rule are described so that it is apparent how they address the concerns of commenters. Where the Agency addresses the meat regulations, conforming changes are also made in the poultry regulations. Any changes unique to either the meat or poultry regulation are identified.

Miscellaneous Issues

Some commenters suggested that the comment period should be extended. FSIS believes that the comment period was adequate in light of the extensive comments that were received.

The vast majority of commenters supported the labeling of products with safe handling instructions. A few consumers, official establishments, university officials, and retailers objected to the labeling either because they believed that the risk of foodbone illness was minimal, that other means of educating consumers were more appropriate, that labeling would be ineffective for educating consumers, that labeling should be a temporary step to be replaced by point of purchase materials at a later date, that official establishments or retailers should not take on the responsibility of educating consumers, that the appropriate alternative was to produce a pathogen free product by requiring irradiation of products, or that some products currently include sufficient safe handling instructions.

FSIS does not agree with these comments. The notion that the risks are minimal is belied by statistics on meat and poultry related foodborne illnesses. The Department has recently published estimates that indicate that in 1992 over four million persons had foodborne illness, and the 1992 cost of foodborne illnesses attributable to meat and poultry products was $3,880 to $4,330 million. These costs include costs of productivity losses related to death or illness as well as medical costs.

Regarding the appropriateness and effectiveness of a label message, participants in focus study research expressed a preference for safe handling instructions to be on the package label and felt that other labeling, such as pamphlets or in-store signs, should only be used to supplement package labels. Some of the commenters on the interim rule were responding to FSIS' request for comments on specific alternatives to placing the message on the label. While they preferred alternatives, there was little information provided in support of the efficacy of these alternatives. Some commented negatively on a specific alternative mentioned in the preamble

to the interim rule. This was the inclusion of the rationale statement on the label with a reference to instructions on an insert. Those commenting rejected this alternative because of concerns over the additional handling associated with inserting labels in the package.

FSIS agrees that official establishments should strive to produce a pathogen free product. Irradiation should be considered along with other pathogen reduction strategies. But FSIS believes labeling should be required unless pathogen free product can be insured. Finally, these safe handling instructions are not intended to replace more comprehensive handling and cooking statements currently on certain product labeling. This statement primarily alerts food preparers that there is a risk of illness if product is mishandled or improperly cooked, and it addresses four broad parameters of food safety.

Officials of five retail chains and one retail association, who support the intent of the regulation, suggested that the regulation have a sunset provision and that the effectiveness of the regulation be studied before the requirements are continued. The Regulatory Flexibility Act already provides that Agencies will periodically review regulations. While this does not have the same effect as a sunset provision, it does insure that the continuing appropriateness of regulations be assessed.

Some commenters asked that the rule language specifically address whether export product would be required to bear the safe handling label. FSIS does not feel that this needs to be put in the regulatory language of the final rule. The conditions under which deviations from labeling requirements are permitted are already set out in 9 CFR 317.7 and 9 CFR 381.128. These sections establish that such deviations as excluding the safe handling instruction can be permitted with the agreement of the foreign consignee, and providing it is not contrary to the law of the importing country.

A number of commenters stated that FSIS improperly invoked the "good cause" exception to the Administrative Procedures Act (APA). The commenters claim that the justification for an interim rule is limited to ground beef and ground poultry, in that the interim rule cited nine incidents of food poisoning in the preceding two months which identified *E. coli* 0157:H7 as the suspected cause of illness or death. The APA requires that agencies publish in the Federal Register a general notice of proposed rule making and provide the opportunity for public comment except in cases "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b).

E. coli 0157:H7 is not the only pathogen targeted in this rule making proceeding. The interim rule also cited statistics relating to illness, death, and medical and productivity cost due to other bacteria, including *Salmonella, Campylobacter jejuni* or *coli, Listeria monocytogenes,* and parasites, including *Toxoplasma gondii, Trichinella spiralis, Taenia saginata,* and *Taenia solium.*

The safe handling instructions were designed to cover the four broad parameters of food safety and to prevent outbreaks of foodborne illness resulting from all sources, not just *E. coli* 0157:H7 in ground beef. Meat and poultry products are known carriers of the pathogenic bacteria and parasites identified in the interim rule and compliance with the safe handling instructions will prevent foodborne illnesses and deaths. To require safe handling instructions exclusively on ground beef and poultry might lead consumers to mistakenly believe that other meat and poultry products are safe, and ignores the growing threat to the public health resulting from bacteria on all meat and poultry products.

As detailed in the interim rule, FSIS has become aware that, in recent years, a growing percentage of the U.S. population lack experience in food preparation and knowledge of safe food handling and storage methods. Furthermore, the public health threat caused by the presence of dangerous bacteria in meat and poultry has worsened in recent years. The Centers for Disease Control and Prevention has placed bacterial contamination in meat at the top of the list of public health threats in the food supply. Based on this information, agency officials began to advocate mandating safe handling instructions on the labeling of meat and poultry products.

The commitment to require safe handling instructions was strengthened in January, 1993, following the largest recorded outbreak of *E. coli* 0157:H7 food poisoning in the Western United States. This outbreak, which was linked to the consumption of undercooked beef patties at a fast food restaurant, resulted in more than 500 illnesses and four deaths.

To convey a complete and effective message, FSIS reviewed available information and consulted with the Food and Drug Administration to identify the parameters of food safety and conducted consumer focus group research. Even while the research effort was continuing on an expedited basis, additional outbreaks of food poisoning occurred, resulting in serious illness and death. These additional illnesses and deaths lead the Department to conclude that an interim rule was necessary to protect the public against the serious and continued health threat caused by bacteria in raw meat and poultry products. For these reasons, FSIS believes that the "good cause" exception to the APA was properly invoked.

Another commenter referenced the litigation cited in the preamble to the interim rule, and commented that it was troublesome to see regulations being promulgated in the courts. As referenced in the background, mandatory safe-handling labeling was endorsed by FSIS prior to the onset of the cited litigation. The stipulated agreement settling the suit only recited the Agency's prior plan to publish regulations and set a date by which FSIS would publish proposed labeling requirements. It did not involve negotiation of a proposal or judicial supervision of its content.

Several commenters stated that FSIS should refrain from offering advice on potential product liability. The observation, in the preamble to the interim rule, that if people did not become ill there would be a reduced potential of product liability claims, does not speak to the possible merits of any claims where an illness had occurred. FSIS does not think the reference is inappropriate.

While there was strong support for safe handling instruction on the labels, many expressed concerns over the feasibility and cost of implementing labeling requirements by October 15, 1993. The cost concerns were discussed in the cost analysis above. The feasibility concerns are discussed below under the heading, "Location of Information on Label." There were few comments regarding the scope of the labeling requirements, except in the context of its initial implementation. These are discussed with the feasibility concerns. Some suggested that the requirements be phased in, either on a risk or feasibility basis. One official of a State meat and poultry inspection program took exception to statements in the preamble to the interim rule that states operating an "equal-to" meat or poultry inspection program must adopt equivalent labeling requirements. The commenter believed that "equal-to" requirements of the FMIA and PPIA did not extend to the labeling of product. Section 301(c) of the FMIA (21 U.S.C.

661(c)) clearly provides that states must establish and effectively enforce requirements with respect to wholly intrastate operations "at least equal" to the requirements under Title I and Title IV of the FMIA. There are similar sections in the PPIA. They cover labeling requirements.

Other commenters expressed concern over enforcement of these requirements at the retail level. One was concerned that meat and poultry inspection programs would not have the resources to do the monitoring. Another was concerned that states would have to monitor it under the authority in their general food sanitation codes. FSIS appreciates the concerns of these commenters. It is envisioned that the monitoring of compliance with these requirements will follow the current model of enforcement of misbranding of products at the retail level. Jurisdiction is primarily exercised by State and local food regulatory agencies. Local codes generally require that foods be fully labeled in conformance with requirements of agencies having jurisdiction over the product. FSIS and State meat and poultry inspection programs also monitor meat and poultry products in commerce. If products are found out of compliance with these requirements, they generally require that the specific product be brought into compliance or other appropriate action is taken. FSIS anticipates that initial compliance monitoring of this labeling requirement at retail will have an educational focus. Where noncompliance is found, FSIS Compliance and other enforcement officials will provide guidance to retailers on these labeling requirements. Where it is apparent that businesses are making a good faith effort to comply with these requirements, they will not be subjected to enforcement action.

Some commenters felt that the focus group research results were misused. They cited a statement in the final report on the focus group research that cautioned that the findings of focus group studies should not be generalized to a larger population in any statistical sense. Some thought that the results of the study were biased in that participants were only presented with six formats and messages to consider. FSIS does not think that its use of the focus group research findings was inappropriate. The study was not intended to determine what parameters of safe handling should be addressed. Its purpose was to determine what label presentation would be most effective. The study produced qualitative conclusions rather that quantitative statistics on the efficacy of the labels.

One commenter asked that FSIS publish its plan for a comprehensive consumer education program. FSIS will announce such plans in an appropriate forum.

Product Appropriateness and Inclusiveness

Several commenters suggested that products covered by the regulations were too inclusive. Some stated that the Department acknowledged in the interim rule that consumers know how to handle some meat and poultry products, thus they do not need safe handling instructions. Specifically, these commenters referenced 9 CFR 318.10(a) which characterizes certain products as "customarily well cooked in the home or elsewhere before being served to the consumer." Two official establishments suggested that the labeling only be required on minimally processed raw muscle meats, one suggesting that other products be labeled on a voluntary basis. Several official establishments recommended that the labeling requirements only apply to ground beef. Three official establishments and three associations of official establishments commented that frozen dinners and entrees should not require the safe handling labels because the products are unpalatable if not cooked and there is little inherent risk of foodborne illness associated with these products because consumers handling is minimized. FSIS does not agree that the regulation is too inclusive.

With regard to the products referenced in 9 CFR 318.10(a), the handling parameters extend beyond cooking. While consumers may know that pork needs to be well cooked, they need to be reminded of such risks as the contamination of ready to eat-to-eat foods by contact with raw meat. The balance of these comments suggest that FSIS should have different requirements for safe handling instructions based on the relative risk of foodborne illness related to different product types. There is a comprehensive discussion of labeling only higher risk products under the heading, "Location of Information on Label." The information presented there supports the conclusion that the regulation is not too inclusive.

A few commenters stated that the regulation was not inclusive enough, and suggested that ready-to-eat product should also bear safe handling instructions since they may become leftovers or may be subject to mishandling. Another suggested that meat products that contain cooked meat ingredients, such as pot pies, should include the safe-handling label because they might be mishandled or temperature abused. One State inspection official suggested that FSIS could coordinate with other regulatory agencies that have jurisdiction over the labeling of products that are not subject to the FMIA and PPIA to insure that they bore a similar instruction. FSIS agrees that there are risks associated with the handling of all foods. However, this rule is intended to address concerns over pathogens on raw and partially cooked meat and poultry products. On that basis, FSIS rejected the idea of requiring that ready-to-eat product or meat or poultry products that contain cooked meat or poultry ingredients should require safe handling instructions. These comments and our analysis of them brought into focus a problem with the structure of the interim rule. With respect to pork products, not all products that are uncooked or not otherwise processed so as to be rendered ready-to-eat are covered by the labeling requirements. The interim rule provides that products that are required by regulation to be treated for trichinae by heating, curing, or refrigeration are not required to bear the labeling. Not all of these products are further processed in a manner that would render them ready-to-eat. In the final rule, FSIS is requiring that those products that are uncooked or not further processed in a manner that would render them ready-to-eat carry the safe handling instructions. This is consistent with the rationale that forms the basis for inclusion of products under the final rule. Products that are added to those that are covered by the interim rule are not required to carry safe handling instruction labeling until January 15, 1994. FSIS will consider and discuss the labeling of other products and products outside our jurisdiction with the Food and Drug Administration.

One commenter said that in defining what cooked product would be exempt from these requirements, FSIS should not establish a time/temperature combination that is qualified by the term, "before removal from the cooking medium." Most cooking methods do not provide an opportunity to test the temperature of the product in the cooking medium. Additionally, some products only achieve the time/temperature combination during a dwell time after removal from the medium. FSIS agrees, and is deleting the phrase in the final rule.

Location of Information on Label

Official establishments and their associations and retailers and their associations detailed problems they would have adding such instructions to

labels in compliance with the regulation. They also detailed problems they would have in acquiring labels or in some cases equipment to apply them by October 15, 1993. Many expressed concern that those problems would be exacerbated if they had to relabel product that was packed prior to that date. While the rule does not apply to product packed prior to October 15, 1993, convincing arguments were made that some products would pose significant problems to achieving compliance with this part by the effective date. The arguments are laid out below.

Both retailers and their associations and official establishments and their associations described problems with fitting labels on small packages. Most retail comments seemed based in a misconception that they could not apply labels to the bottom of tray packed products. Six retailers suggested permitting safe handling instructions on the bottom of the package. One printer also endorsed this idea. Another printer objected to placing the instructions on the bottom of the package, arguing that the label would not be conspicuous and that tray manufacturers would have to bear the cost of retooling to produce such trays. Several commenters also objected to any prohibitions on labeling the tray bottom, arguing that consumers wanted to be able to see what they were buying. FSIS reaffirms that these labels can be placed on the bottom of trays, and concludes that retailers will be able to label these small packages under the terms of the interim rule. One commenter questioned whether pressure sensitive labels would adhere to the bottom of tray packed products. FSIS believes that the labels will adhere to the bottom of the trays. However, as discussed below, in the final rule FSIS has permitted more flexibility in the placement of the safe handling instructions.

Some commenters asked that FSIS directly address whether this rule would preempt local labeling laws. They had concluded that they could not comply with this label requirement and meet local restrictions on label size. The issue of preemption is not peculiar to this regulation. As indicated above, if the local law is inconsistent with the Federal requirement, the Federal requirement would preempt the local law. However, FSIS does not expect that the issue will arise here. The Federal requirement as set out in this final rule provides significant flexibility in label shape and placement.

One retail store chain official stated that the logistics of getting labeling materials to a large number of stores and of training personnel at those stores were difficult, and that a longer implementation period was required. While FSIS agrees that the task is challenging, it believes that large chains have the communications infrastructure to accomplish training tasks and that added options for compliance under the final rule will make acquiring materials easier.

The interim rule provides that the instructions appear on the label's principal display panel or information panel. Several official establishments and their associations suggested that FSIS permit labeling on other panels including the top of boxes and the front riser panel of tray packs. They said this would be conspicuous and visible to consumers. Official establishments also posed the issue of not being able to fit the a pressure-sensitive label containing the safe handling instructions on small packages without obscuring other mandatory information. While they could make adjustments in label design, they would not have enough lead time to get labels printed by October 15, 1993. Some questioned whether very small packages could fit both required safe-handling labels and nutrition education labels.

The final rule provides more flexibility in the placement of the safe handling instructions on the label. The requirement that safe handling instructions be on the principal display panel or the information panel of the label has been deleted in the final rule. FSIS permits safe handling instructions to appear anywhere on the label where they are likely to be read. FSIS is not aware of labels smaller than those on 12 ounce chubs that would likely require safe handling instructions. FSIS believes that with the added flexibility provided in the final rule and the flexibility provided in the nutrition labeling regulations that labels will be large enough to accommodate both the mandatory features.

Many official establishments and their associations commented that without redesign and reprinting of printed film, or of labeling to be applied to products that would be frozen before shipment, they would be faced with an extremely difficult challenge. They would have to find pressure-sensitive labels that would adhere to packages through the chilling and freezing process, or that would adhere to a frozen package. Many reported a history of past failure in such efforts. They also pointed out that in those cases where the packaging and labeling step is the same, because the label is printed on the packaging film, it would be extremely disruptive to the manufacturing line, if not impossible, to insert a step where pressure sensitive labels would be applied.

Several official establishments and their associations also described problems with getting pressure-sensitive stickers that could be applied to wax coated cartons. They also described past failures. Some suggested that FSIS allow official establishments to supply insert labels to retailers or other point of purchase materials as an interim step to requiring labels, as a way of obviating these problems.

Many official establishments and their associations, retailers and their associations, as well as several officials of State meat and poultry inspection programs and others sought some form of extension of the effective date of the rule. These ranged from simply ensuring that the rule only applied to products packed on or after October 15, 1993, to delaying the effective date to October, 1994. The most frequent variant was a recommendation that the effective date coincide with that of the nutrition labeling regulation. One noted that the short implementation deadline denied them the opportunity to search for the least costly way of coming into compliance. Many official poultry establishments and their associations recommended that FSIS phase in the rule. They suggested only requiring the label on ground meat or ground poultry on October 15, 1993, if the product labels were void of cooking instructions or other voluntary handling instructions. They argued that the need to label by October 15, 1993 had only been demonstrated for these ground products. Under different comments the balance of products would become labeled on various dates, from November 15, 1993 to October, 1994. Some commenters suggested that FSIS allow use of point of purchase materials during that time. Some suggested that to avoid confusion, nothing should become effective until publication of a final rule. Several commenters recommended that implementation of these requirements not be delayed for any reason, because of the risks of foodborne illness associated with raw meat and poultry. One State meat and poultry inspection official suggested that the requirements take effect on October 15, 1993, but that compliance enforcement be phased in. The commenter suggested that no compliance reviews be made until January, 1994, and that no penalties be assessed until April, 1994. One association of official establishments and several other commenters suggested that a rule of reason should be applied in enforcing compliance with this part. Some commenters suggested that FSIS

allow the use of pressure sensitive labels bearing the safe-handling message indefinitely. Pressure sensitive labels may be used to modify a package label indefinitely. However, FSIS expects that most retailers and official establishments will incorporate safe handling instructions onto a label to achieve economy.

Recognizing that official establishments and retailers will have problems including the safe handling instructions on the labeling of some products, FSIS has modified the rule to permit official establishments and retailers to use alternate approaches to deliver the safe handling instructions to consumers for a 6-month period, except for comminuted products. "Comminuted" is a processing term which describes the reduction in size of pieces of meat or poultry, and included chopping, flaking, grinding, or mincing. All official establishments and retailers will be required to comply with the requirement that the safe handling instructions appear on the product label by April 15, 1994. FSIS anticipates that some official establishments that produce these products will be able to comply sooner than that date as their individual circumstances permit. The Agency expects that they would comply as soon as possible since the alternate approaches entail use of additional materials and added handling of products. The April 15, 1994, date will have provided official establishments and retailers manufacturing the covered categories of products a reasonable amount of time from the publication of this final rule to obtain labeling. This should be sufficient, especially in light of the generic approval of such labels. FSIS believes that these alternatives are responsive to their comments, and will allow official establishments and retailers to achieve compliance by October 15, 1993, and will insure that the safe-handling instructions reach consumers.

The permitted alternate approaches are presented below: (1) Official establishments may include in the shipping container either pressure-sensitive labels containing the safe handling instructions for retailers to apply to packages or leaflets containing a facsimile of the safe handling instructions in lettering no smaller than one-sixteenth of an inch for retailers to place in close proximity to the packages to ensure that leaflets are likely to be seen and taken home by consumers; and (2) retailers may distribute leaflets concerning the facsimile described below.

In some cases, it is expected that retailers might prefer pressure-sensitive labels or leaflets of their own design and manufacture to those that an official establishment would provide under the permitted alternative. If a retailer notifies an official establishment in writing that it intends to supply its own labels on labeling, the official establishment would not be required to supply the materials as the shipping container.

The final rule does not permit these alternate approaches to be used for comminuted meat or comminuted poultry products. FSIS recognizes that these products may pose the same or similar challenges with respect to affixing safe-handling instructions. However, these comminuted products pose an increased risk of foodborne illness. First, the starting materials for comminuted meat and poultry products are trimmings which tend to have a higher probability of contamination because a high percentage of trimmings come from the surface of the carcass. Second, the production process assures that any present pathogens will be distributed throughout the product, including the interior, while bacteria tend to remain on the surface of other cuts of meat and poultry. The consumption of raw comminuted meat packaged at a single meat processing establishment, was the cause of a multi-State outbreak of *Salmonella* newport disease (Fontaine *et al.*, 1978).[4] Pathogenic *E. coli* 0157:H7 in comminuted meat has been responsible for outbreaks of hemorrhagic colitis. Adequate cooking of the comminuted meat should minimize or eliminate the risk of contracting this disease from its consumption. Cooked comminuted meat as an ingredient in a variety of foods can be associated with foodborne illness (Bryan, 1980).[5]

The Agency concludes that all products defined in the interim rule should have such labeling, as indicated above, regarding safe handling instructions by October 15, 1993 and that meat or meat products of swine that have been added under the final rule should have such labeling by January 15, 1994. Official establishments would be able to obtain the alternate labeling materials allowed under the final rule by that date. They also would be able to come into full compliance with the label requirements for any comminuted products by the date. FSIS does not find the arguments offered for any more liberal phase-in period on complexity or on a risk basis to be compelling, for the following reasons. *E. coli* 0157:H7 is not the sole target of this initiative. As indicated into the item rule, during 1992, it is estimated that there were over four million cases of foodborne illnesses. During the period 1972–1987, 1,879 foodborne disease outbreaks associated with bacterial agents and involving 108,906 cases were reported to CDC (Table 1). The most frequently identified bacterial agent was *Salmonella* followed in order by *Staphylococcus aureus, Clostridium botulinum, Clostridium perfringens* and *Shigella*. Food products of all types were identified as vehicles (Table 2) including beef, pork, turkey, and chicken products. The bacterial agents most frequently identified for illnesses associated with meat and poultry products were *Salmonella, Staphylococcus aureus, Clostridium perfringens* and pathogenic *Escherichia coli* including *E. coli* 0157:H7. For these organisms, in particular, the most frequently reported factors identified as contributing to the outbreaks were improper holding temperatures and inadequate cooking (Table 3). Outbreaks were associated with food prepared in homes, delicatessens, cafeterias, restaurants, schools, picnics, churches, and camps (Table 4). Since foodborne illnesses have been associated with all food product types and species and at all food preparation levels, instructions on the proper storage and preparation procedures are essential to the education of food preparation personnel at all levels and to the prevention of illness and death.

Carcasses, primal, sub-primal, and retail cuts of meat from normal, healthy animals contain a variety of microorganisms including low levels of some pathogens. Refrigerated raw meats will spoil eventually even if they are produced from the carcasses of normal, healthy animals, fabricated under good manufacturing conditions, and properly refrigerated. If meats are not properly cooked, held, cooled, and stored, they can potentially cause foodborne illness. Frozen raw meat and poultry products, including dinners and entrees, are vulnerable to the same mishandling risks associated with fresh product.

[4] A copy of this study is available for public review in the FSIS Hearing Clerk's office.

[5] A copy of this study is available for public review in the FSIS Hearing Clerk office.

TABLE 1.—NUMBER AND PERCENTAGE OF FOODBORNE DISEASE OUTBREAKS AND CASES OF KNOWN ETIOLOGY, BY ETIOLOGIC AGENT, 1973–87 [1]

Etiologic agent	Outbreaks		Cases	
	No.	Percent	No.	Percent
Bacterial:				
Bacillus cereus	58	2	1123	1
Brucella	4	<1	43	<1
Campylobacter	53	2	1547	1
Clostridium botulinum	231	8	494	<1
Clostridium perfringens	190	7	12234	10
Escherichia coli	10	<1	1187	1
Salmonella	790	28	55864	45
Shigella	104	4	14399	12
Staphylococcus aureus	367	13	17248	14
Streptococcus, group A	12	<1	1917	2
Streptococcus, other	7	<1	248	1
Vibrio cholerae	6	<1	916	1
Vibrio cholerae, non-01	2	<1	11	<1
Vibrio parahaemolyticus	23	1	535	<1
Yersinia enterocolitica	5	<1	767	1
Other bacterial	7	<1	373	<1
Total bacterial	1879	66	108906	87

[1] Bean, N.H. and P.M. Griffin. 1990. Foodborne Disease Outbreaks in the United States, 1973–1987: Pathogens, Vehicles, and Trends. Jour. Food Prot. 53:804–817.

TABLE 2.—NUMBER OF FOODBORNE OUTBREAKS BY BACTERIAL AGENT AND FOOD VEHICLE, 1973–87 [1]

Bacterial agent	Chicken	Turkey	Beef	Pork	Bakery prod.	Chinese food	Dairy prod.	Eggs	Finfish	Fruits & veggies	Ice cream	Mexican food	Mushrooms	Nondairy beverages	Shellfish	Other	Unknown	Total
Bacillus cereus	1	1	3	0	0	24	0	0	1	3	1	5	0	0	2	8	9	58
Brucella	0	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	1	4
Campylobacter	2	1	0	0	1	1	25	1	0	1	0	0	0	0	0	5	16	53
Clostridium botulinum	1	1	2	1	0	0	1	0	35	99	0	3	5	5	0	40	38	231
Clostridium perfringens	9	19	51	8	0	0	0	0	3	1	0	23	0	0	2	46	28	190
Escherichia coli	9	0	3	0	0	0	0	0	3	1	0	2	0	0	0	2	0	20
Salmonella	30	36	77	25	12	2	22	16	5	9	28	10	0	4	3	191	320	790
Shigella	3	1	0	0	1	0	0	1	3	3	0	2	0	0	4	43	43	104
Staphylococcus aureus	14	20	22	96	26	0	5	9	3	4	1	4	0	0	2	137	24	367
Streptococcus, group A	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	6	5	12
Streptococcus, other	0	0	1	0	0	0	1	0	1	1	0	1	0	0	0	1	1	7
Vibrio cholerae	0	0	0	0	0	0	0	0	2	0	0	0	0	0	3	1	0	6
Vibrio cholerae, non-01	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	2
Vibrio parahaemolyticus	0	0	0	0	0	0	0	0	1	0	0	0	0	0	18	1	3	23
Yersinia enterocolitica	0	0	0	0	0	0	2	0	0	2	0	0	0	0	0	1	0	5
Other bacterial	1	0	0	0	0	0	2	0	0	0	0	0	0	0	0	3	1	7
Total bacterial	70	79	159	130	40	27	61	28	57	124	30	50	5	9	36	485	489	1879
Percent of total	3.7	4.2	8.5	6.9	2.1	1.4	3.2	1.5	3.0	6.6	1.6	2.7	0.3	0.5	1.9	25.8	26.0	

[1] Bean, N.H. and P.M. Griffin. 1990. Foodborne Disease Outbreaks in the United States, 1973–1987. Jour. Food Prot. 53:804–817.

TABLE 3.—PERCENTAGE OF FOODBORNE OUTBREAKS IN WHICH FACTORS THOUGHT TO CONTRIBUTE TO THE OUTBREAKS WERE REPORTED, BY ETIOLOGIC AGENT, 1973–87 [1]

Etiologic agent	Contributing factor [2]						
	Number of outbreaks in which factors reported [3]	Improper holding temperatures	Inadequate cooking	Contaminated equipment	Food from unsafe source	Poor personal hygiene	Other
Bacterial:							
Bacillus cereus	48	94	32	53	5	24	33
Brucella	2	0	50	0	100	0	100
Campylobacter	27	45	45	45	67	45	57
Clostridium botulinum	69	34	91	3	3	0	41
Clostridium perfringens	147	97	65	28	6	26	34
Escherichia coli	3	.....	50	0	0	0	100
Salmonella	504	83	67	63	25	63	43
Shigella	68	63	3	30	11	91	33
Staphylococcus aureus	272	98	22	43	12	71	24
Streptococcus, group A	11	100	0	0	0	88	20
Streptococcus, other	2	.....	.....	.....	100	100	.....
Vibrio cholerae	3	100	100	.....	100	.....	.....
Vibrio cholerae, non–01	1	.....	100	.....	.....	.....	.....
Vibrio parahaemolyticus	16	75	92	0	75	0	33
Yersinia enterocolitica	2	100	100	100	100	100	100
Other bacteria	7	100	50	0	50	100	100
Total bacterial	1182	87	56	47	20	59	37

[1] Bean, N.H. and P.M. Griffin. 1990. Foodborne Disease Outbreaks in the United States, 1973–1987: Pathogens, Vehicles, and Trends. Jour. Food Prot. *53:* 804–817.

[2] For many outbreaks more than one factor was responsible.

[3] Number given is the number of outbreaks for which the presence or absence of any factor was reported. The donominator for each factor varies and is the number of outbreaks in which the presence or absence of that factor was reported.

TABLE 4.—FOODBORNE DISEASE OUTBREAKS, BY ETIOLOGIC AGENT AND PLACE WHERE FOOD EATEN, 1983–1987 [1]

Etiologic agent	Home	Delicatessen, cafeteria, restaurant	School	Picnic	Church	Camp	Other	Unknown	Total
Bacterial:									
B. cereus	4	7	2	.....	1	.....	1	1	16
Brucella	2	.....	.....	.....	.....	.....	.....	.....	2
Campylobacter	8	4	1	2	.....	1	12	.....	28
C. botulinum	56	2	.....	.....	.....	.....	.....	16	74
C. perfringens	1	9	3	.....	1	.....	10	.....	24
E. coli	1	1	.....	1	.....	.....	4	.....	7
Salmonella	60	141	16	9	11	4	93	8	342
Shigella	4	21	1	1	2	2	12	1	44
S. aureus	6	5	6	4	4	1	20	1	47
Streptococcus, group A	2	3	1	.....	1	.....	.....	.....	7
Streptococcus, other	1	.....	1	.....	.....	.....	.....	.....	2
Vibrio cholera	1	.....	.....	.....	.....	.....	.....	.....	1
Vibrio parahemolyticus	2	1	.....	.....	.....	.....	.....	.....	3
Other bacterial	1	.....	.....	.....	.....	.....	2	.....	3
Total	149	194	31	17	20	8	154	27	600

[1] Bean, Nancy H., et al. 1990. Foodborne Delicatessen Outbreaks, 5-year Summary, 1983–1987. Jour. Food Prot. 53:711–728.

General Label Format and Features

Four commenters stated that the label size was too large. The comments were based on the assumption that the label needed to be of the size and format of the exhibit appearing in the preamble to the interim rule. This was not the Agency's intent. Two commenters stated that the one-sixteenth of an inch type size was too small to be easily read. FSIS believes that the one-sixteenth of an inch type size minimum provides a balance between readability and the availability of space on packages to incorporate safe handling instructions. Most other size comments were restricted to the problem of obscuring other mandatory label features if pressure-sensitive labels were applied during a period prior to label redesign and printing.

Employees of the Food Labeling Division of FSIS noted that several businesses which sought approval of labels under the interim rule found the reference to a "neutral" background to be confusing. Similarly, businesses were limited by the requirements for setting off the same handling instructions in a box marketed by a hairline. Additionally, one commenter asked that FSIS specifically provide that the configuration of the safe handling statement could be variable, e.g., triangular, trapezoidal, etc., to facilitate incorporating the statement onto labels. In the final rule, FSIS has deleted there reference to "neutral," and simply requires one color type against a solid, contrasting-color background. FSIS has also removed the "box" requirement, and allows the use of any border to set off the safe handling instructions including a change of color of the background.

Rationale Statement

Many official establishments and their associations, and numerous retail chains and their associations expressed the opinion that the rationale statement was cast negatively. They also said it unfairly singled out animal products as potential sources of pathogens. In so doing, it was implying that other foods were safer than meat and poultry. The commenters suggested substituting "Food Products," or "Agricultural Products" for "Animal Products" in the statement. This comment and recommendation was also made by a university official. A restaurant chain and an association of restaurant chains commented that the rationale statement gave the impression that improper handling is the sole cause of foodborne illness. They discussed the need for overlapping systems of control that would ensure that they receive and prepare a wholesome product. One commenter suggested dropping the statement since it contained no actionable information for the consumer. Others expressed strong objections to constructing this as a warning label rather that as an information label. Conversely, some consumer interest groups stated that the "inspected and passed" and "inspected for your safety" phrases were misleading and consumers would not read beyond those phrases. Five consumer interest groups suggested including the words "danger," "warning," or "caution" in the statement. One commenter thought that the rationale statement should also mention the possibility of death, and that it should also include descriptions of the symptoms of foodborne illnesses.

Other commenters suggested minor wording changes. Two suggested changing "raw" to "uncooked." No explanation was given. Another wanted "bacteria" changed to "organisms." The commenter seemingly thought that this change would permit official establishments to eliminate some sanitation procedures. The logic of this was unclear.

Official establishments, retailers, and their respective associations raised an objection to having separate rationale statements for meat and for poultry. The stated that it would be more efficient to have one statement that would cover both meat and poultry. They pointed out that the current requirement necessitated two inventories of labels and introduced the possibility of error in applying the labels. Such errors would undermine consumer confidence in the label. Many other commenters agreed with this comment and recommendation, including State meat and poultry inspection officials, a small business advocacy group, and the Small Business Administration.

An additional issue raised by official establishments and their associations was an objection to having separate labels for products packaged by official establishments and products packaged by retailers solely because of a difference in one sentence of the rationale statement. They argued that the retail statement which states that product was produced from inspected and passed meat would be equally true for products packaged at an official establishment. Since official establishments may end up supplying labels to a retailer in some cases, they argued that it would be better to have only one label.

FSIS is convinced that significant economies and reduced labeling errors could be achieved by allowing one rationale statement to satisfy retail and official establishment labeling of both meat and poultry products. Changes have been incorporated into the final rule to allow for one rationale statement. FSIS also determined that it would be appropriate to substitute "food products" for "animal products." Other minor word changes were not adopted because cogent arguments were not presented to support them. FSIS has also concluded that the rationale statement strikes a good balance that will neither scare consumers away from meat and poultry products nor cause them to ignore risks of foodborne illness.

One State meat and poultry inspection official commented that none of the rationale statements were appropriate for poultry slaughtered under exemptions specified in 9 CFR 381.10. The rationale statement refers to inspected products. Products produced under these exemptions from inspection requirements should not carry a reference to inspected product. FSIS agrees with this comment, and in the final rule provides an appropriate rationale statement for these poultry products.

One commenter stated that a different rationale statement should be permitted for irradiated product. They felt a reference should be made to the reductions in bacterial counts that irradiation produces. FSIS does not agree. Consumers might conclude that the handling statements did not apply.

Consumer Handling Statement

The majority of commenters on the handling statements addressed only the cooking statement. Comments from 69 consumers suggested that a cooking temperature was necessary in the cooking statement. Most of the comments contained a 160° F recommendation. Officials of five universities commented on the cooking statement. One endorsed adding a cooking temperature. The others suggested that more information should be provided, but not a temperature. One noted, "The use of a specific temperature endpoint is not feasible for consumer use. * * * Therefore, the qualitative subjective statements are appropriate." Six consumer interest groups and two retailers also stated that more explicit cooking instructions were necessary. Many recommended allowing businesses to incorporate their recommended cooking messages into the label. FSIS does not believe it would be appropriate to add either an endpoint temperature or more comprehensive cooking directions because cooking

temperature and other visual indications of doneness vary by product. As stated above, this labeling is not intended to replace comprehensive cooking and handling statements that accompany some products.

One commenter suggested that the cooking parameter not be addressed since research does not establish lethality data for all pathogens. The commenters suggested that this labeling initiative be postponed until such research is available. FSIS has not required that safe handling instructions include a cooking temperature. Suggesting that consumers cook product thoroughly is not dependent on lethality data for all products and pathogens.

One commenter suggested that the safe handling instruction be limited to the cooking parameter only. They argued that since undercooking was the usual cause cited for E. Coli. illnesses, this is the only one necessary. FSIS did not agree with this comment. As cited above, mishandling and improper storage are also significant contributors to the incidence of foodborne illness.

Additional comments related to the literacy level of the handling instructions, the efficacy of the symbols required, a suggestion that one statement be modified to make it applicable to both meat and poultry, concerns that generic handling statements would not be useful to consumers, concerns that insufficient generic statements might result in liability claims, and concerns over likely inconsistencies between the "Keep refrigerated or frozen. Thaw in refrigerator or microwave" statement and other handling statements on some packages. Additional commenters addressed the use of the term, "leftovers," suggested modifying the hand-washing instruction, and suggested adding the FSIS Hotline telephone number to the statement.

FSIS does not believe that comments on the reading level of the statements provide sufficient data to justify a change, especially since they offered no alternative language.

Reaction of commenters to the graphic symbols were mixed. Many commenters characterized them as clear and easily understood. Others expressed concerns that they were not clear. Almost all commenters thought the refrigerator symbol was clear, and that consumers would understand that the product should be refrigerated or frozen. The final rule leaves it unchanged. Many commenters objected to the bar of soap symbol. The accompanying message covers separation of raw and ready-to-eat foods and cleaning of hands and food preparation surfaces and utensils. Some suggested presenting these in two separate messages with separate graphics, or together with two graphics in a "split screen." Critics of the bar of soap pointed out that consumers might think they should wash the product with soap. They also pointed out that bar soap is not approved for cleaning food contact surfaces. FSIS has decided that the message should still cover both separation and cleaning, but that the graphic symbol should be changed. The required symbol will be soapy hands under a faucet. This could be interpreted both as washing hands, a part of the message, and as washing utensils, another part of the message.

Some commenters objected to the skillet symbol, suggesting that it might imply that frying was the recommended cooking method. One suggested a range instead. Based on a relatively high acceptance of the skillet symbol among commenters, FSIS will leave it unchanged.

Many commenters thought the clock symbol was confusing, especially in the context of the institutional message. Many pointed out that temperature was the primary concern under both the consumer and institutional messages. A thermometer was often recommended by commenters. FSIS will make this change in the final rule.

The commenters that support modifying one of the statements to make it applicable to both meat and poultry argue convincingly that significant economies and reduced error in labeling will result from the change. The final rule makes that modification.

FSIS does not agree that generic statements are insufficient or could lead to liability claims. The underlying food safety principles addressed in the safe handling statements apply to all meat and poultry products that require cooking. Additionally, the statements are not intended to replace more comprehensive handling and cooking instructions contained on some labels.

Several official establishments, restaurant chains and their respective associations commented that the "Keep refrigerated or frozen. Thaw in refrigerator or microwave." statement was, in some cases, contradictory to other handling statements on the package, and could result in creation of confusion and errors in handling. Products such as frozen stuffed turkeys were cited as representative of the problem. They are designed to go from freezer to the cook step without thawing, as are many other products. Thawing them would increase the likelihood of pathogen growth. FSIS finds this argument compelling, and has amended this provision in the final rule to permit official establishments and retailers to omit any portion of the statement that is in conflict with the product's specific handling instructions.

One commenter stated that the use of the term "leftovers," as used in the last statement, would not be understood by consumers because it is a colloquial term. FSIS does not agree. The term is well understood.

Two commenters suggested that the hand-washing instruction be modified to add washing *before* handling meat or poultry products. While FSIS agrees that this is a good practice, the focus of these statements is avoidance of contamination of other ready-to-eat foods by contact with raw meat and poultry product. This change will not be incorporated.

One commenter suggested that the FSIS Meat and Poultry Hotline telephone number be added to the statement, so that consumers could call food handling experts if they had any questions arising from the statement. The Meat and Poultry Hotline telephone number may be included on other parts of the label. FSIS does not believe it is necessary to include this phone number with the safe handling instructions.

Institutional Handling Statements

Comments on the institutional handling statements were primarily from official establishments who sought some modification to this or the consumer label to permit the use of one label. Additional commenters on these statements included restaurants and their associations and others who expressed concerns about including a 140 °F hot holding statement because it might be viewed as a cooking temperature, and concerns about the "Keep Refrigerated. Keep Frozen" statement. The latter concerns paralleled those discussed under the "Consumer Handling Statements" heading. These commenters suggested that FSIS address these concerns by permitting different handling statements to be used for different customers, or different statements be approved on a case by case basis by the Administrator. Other commenters recommended that no variations be allowed. FSIS believes that the changes that permit certain terms to be dropped if they conflict with other handling statements adequately addresses that concern. No alternate statements will be permitted.

One restaurant chain official asked that the phrase, "Keep raw meat and poultry separate from other foods," should be more precisely defined. They thought some might think that they were required to main separate refrigerators for raw meat and poultry.

FSIS does not agree that readers will draw that inference from the phrase.

Commenters, including official establishments, FDA officials, university officials, and others suggested specific changes to the handling statement and the symbol associated with the hot holding temperature. These commenters pointed out that the clock symbol was inappropriate to the message. Several suggested a thermometer. The FDA officials suggested adding language relating to reheating of the product to 165 °F if a temperature recommendation is included. FSIS is convinced that including a hot holding temperature might result in it being viewed as a cooking temperature. The holding statement will be changed in the final rule to "Keep hot foods hot. Refrigerate leftovers immediately or discard." The latter part of the phrase responds to comments by FDA and the restaurant associations that the message include the likelihood of discarding leftovers. FSIS is adopting the symbol change in the final rule. Since omitting the hot holding temperature eliminates the major distinction between the household consumer statement and the institutional statement, FSIS is incorporating the changes discussed above into one statement to cover all products, whether they are intended for consumers or institutions.

The label for safe handling instructions including all revisions made by the final rule is shown in Exhibit 1.

BILLING CODE 3410-DM-M

EXHIBIT 1

Safe Handling Instructions

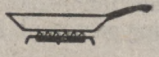
This product was prepared from inspected and passed meat and/or poultry. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions.



Keep refrigerated or frozen.
Thaw in refrigerator or microwave.



Keep raw meat and poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry.



Cook thoroughly.



Keep hot foods hot. Refrigerate leftovers immediately or discard.

BILLING CODE 3410-DM-C

FSIS is adopting the interim rule as a final rule with the changes as discussed above. Labels prepared in accordance with the interim rule may be used until April 15, 1994.

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, the interim rule amending 9 CFR parts 317 and 381 of the Federal meat and poultry products inspection regulations published at 58 FR 43478, August 16, 1993, is adopted as final with the following changes:

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 revising paragraph (l) to read as follows:

§ 317.2 Labels; definition; required features.

* * * * *

(l) Safe handling instructions shall be provided for: All meat and meat products of cattle, swine, sheep, goat, horse, or other equine not heat processed in a manner that conforms to the time and temperature combinations in the Table for Time/Temperature Combination For Cooked Beef, Roast Beef, and Cooked Corned Beef in § 318.17, or that have not undergone other further processing that would render them ready-to-eat; and all comminuted meat patties not heat processed in a manner that conforms to the time and temperature combinations in the Table for Permitted Heat-Processing Temperature/Time Combinations For Fully-Cooked Patties in § 318.23; except as exempted under paragraph (l)(4) of this section, provided, however that swine products other than those described in § 318.10(a)(1) need not be labeled with safe handling instructions until January 15, 1994.

(1)(i) Safe handling instructions shall accompany every meat or meat product, specified in this paragraph (l), destined for household consumers, hotels, restaurants, or similar institutions and shall appear on the label, except as provided in paragraphs (l)(1)(i) (A) and (B) of this section. The information shall be in lettering no smaller than one-sixteenth of an inch in size and shall be prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(A) Until April 15 1994, in lieu of placing the safe handling instructions on the label, official establishments may include in the shipping container either pressure-sensitive labels containing the safe handling instructions for retailers to apply to packages or leaflets containing a facsimile of the safe handling instructions in lettering no smaller than one-sixteenth of an inch for retailers to distribute with the packages, except that this is not permitted for comminuted meat products. Including pressure-sensitive labels or leaflets in shipping containers is not necessary if retailers notify official establishments in writing that they will provide such labeling.

(B) Until April 15, 1994, in lieu of placing the safe handling instructions on the label, retailers may distribute leaflets containing a facsimile of the safe handling instructions in lettering no smaller than one-sixteenth of an inch, except that this is not permitted for comminuted meat products.

(ii) The safe handling information shall be presented on the label under the heading "Safe Handling Instructions" which shall be set in type size larger than the print size of the rationale statement and handling statements as discussed in paragraphs (l)(2) and (l)(3) of this section. The safe handling information shall be set off by a border and shall be one color type printed on a single color contrasting background whenever practical.

(2) The labels of the meat and meat products specified in this paragraph (l) shall include the following rationale statement as part of the safe handling instructions, "This product was prepared from inspected and passed meat and/or poultry. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement shall be placed immediately after the heading and before the safe handling statements.

(3) Meat and meat products, specified in this paragraph (l), shall bear the labeling statements:

(i) Keep refrigerated or frozen. Thaw in refrigerator or microwave. (Any portion of this statement that is in conflict with the product's specific handling instructions, may be omitted, e.g., instructions to cook without thawing.) (A graphic illustration of a refrigerator shall be displayed next to the statement.);

(ii) Keep raw meat and poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry. (A graphic illustration of soapy hands under a faucet shall be displayed next to the statement.);

(iii) Cook thoroughly. (A graphic illustration of a skillet shall be displayed next to the statement.); and

(iv) Keep hot foods hot. Refrigerate leftovers immediately or discard. (A graphic illustration of a thermometer shall be displayed next to the statement.)

(4) Meat or meat products intended for further processing at another official establishment are exempt from the requirements prescribed in paragraphs (l)(1) through (l)(3) of this section.

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 381.125 is amended by revising paragraph (b) to read as follows:

§ 381.125 Special handling label requirements.

* * * * *

(b) Safe handling instructions shall be provided for all poultry products not heat processed in accordance with the provisions of § 381.150(b) or that have not undergone other further processing that would render them ready-to-eat, except as exempted under paragraph (b)(4) of this section.

(1)(i) Safe handling instructions shall accompany the poultry products, specified in this paragraph (b), destined for household consumers, hotels, restaurants, or similar institutions and shall appear on the label, except as provided in paragraphs (b)(1)(i) (A) and (B) of this section. The information shall be in lettering no smaller than one-sixteenth of an inch in size and shall be prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(A) Until April 15, 1994, in lieu of placing the safe handling instructions on the label, official establishments may include in the shipping container either pressure-sensitive labels containing the safe handling instructions for retailers to

apply to packages or leaflets containing a facsimile of the safe handling instructions in lettering no smaller than one-sixteenth of an inch for retailers to distribute with the packages, except that this is not permitted for comminuted poultry products. Including pressure-sensitive labels or leaflets in shipping containers is not necessary if retailers notify official establishments in writing that they will provide such labeling.

(B) Until April 15, 1994, in lieu of placing the safe handling instructions on the label, retailers may distribute leaflets containing a facsimile of the safe handling instructions in lettering no smaller than one-sixteenth of an inch, except that this is not permitted for comminuted poultry products.

(ii) The safe handling information shall be presented on the label under the heading "Safe Handling Instructions" which shall be set in type size larger than the print size of the rationale statement and handling statements as discussed in paragraphs (b)(2) and (b)(3) of this section. The safe handling information shall be set off by a border and shall be one color type printed on a single color contrasting background whenever practical.

(2)(i) The labels of the poultry products, specified in this paragraph (b) and prepared from inspected and passed poultry, shall include the following rationale statement as part of the safe handling instructions, "This product was prepared from inspected and passed meat and/or poultry. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow these safe handling instructions." This statement shall be placed immediately after the heading and before the safe handling statements.

(ii) The labels of the poultry products, specified in this paragraph (b) and prepared pursuant to § 381.10(a) (2), (5), (6), and (7), shall include the following rationale statement as part of the safe handling instructions,"Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly. For your protection, follow the safe handling instructions." This statement shall be placed immediately after the heading and before these safe handling statements.

(3) Poultry products, specified in this paragraph (b), shall bear the labeling statements:

(i) Keep refrigerated or frozen. Thaw in refrigerator or microwave. (Any portion of this statement that is in conflict with the product's specific handling instructions may be omitted, e.g., instructions to cook without thawing.) (A graphic illustration of a refrigerator shall be displayed next to the statement.);

(ii) Keep raw meat and poultry separate from other foods. Wash working surfaces (including cutting boards), utensils, and hands after touching raw meat or poultry. (A graphic illustration of soapy hands under a faucet shall be displayed next to the statement.);

(iii) Cook thoroughly. (A graphic illustration of a skillet shall be displayed next to the statement.); and

(iv) Keep hot foods hot. Refrigerate leftovers immediately or discard. (A graphic illustration of a thermometer shall be displayed next to the statement.)

(4) Poultry products intended for further processing at another official establishment are exempt from the requirements prescribed in paragraphs (b)(1) through (b)(3) of this section.

Done at Washington, DC, on: October 6, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 20/P.L. 103–94

Hatch Act Reform Amendments of 1993 (Oct. 6, 1993; 107 Stat. 1001; 11 pages)

H.R. 1513/P.L. 103–95

To designate the United States courthouse located at 10th and Main Streets in Richmond, Virginia, as the "Lewis F. Powell, Jr. United States Courthouse". (Oct. 6, 1993; 107 Stat. 1012; 1 page)

H.R. 2431/P.L. 103–96

To designate the Federal building in Jacksonville, Florida, as the "Charles E. Bennett Federal Building". (Oct. 6, 1993; 107 Stat. 1013; 1 page)

S. 464/P.L. 103–97

To redesignate the Pulaski Post Office located at 111 West College Street in Pulaski, Tennessee, as the "Ross Bass Post Office". (Oct. 6, 1993; 107 Stat. 1014; 1 page)

S. 779/P.L. 103–98

To continue the authorization of appropriations for the East Court of the National Museum of Natural History, and for other purposes. (Oct. 6, 1993; 107 Stat. 1015; 1 page)

S.J. Res. 61/P.L. 103–99

To designate the week of October 3, 1993, through October 9, 1993, as "Mental Illness Awareness Week". (Oct. 6, 1993; 107 Stat. 1016; 2 pages)

S.J. Res. 121/P.L. 103–100

To designate October 6, 1993 and 1994, as "German-American Day". (Oct. 6, 1993; 107 Stat. 1018; 2 pages)

Last List October 6, 1993

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	[1] Jan. 1, 1993
4	(869–019–00003–8)	5.50	Jan. 1, 1993
5 Parts:			
1–699	(869–019–00004–6)	21.00	Jan. 1, 1993
700–1199	(869–019–00005–4)	17.00	Jan. 1, 1993
1200–End, 6 (6 Reserved)	(869–019–00006–2)	21.00	Jan. 1, 1993
7 Parts:			
0–26	(869–019–00007–1)	20.00	Jan. 1, 1993
27–45	(869–019–00008–9)	13.00	Jan. 1, 1993
46–51	(869–019–00009–7)	20.00	Jan. 1, 1993
52	(869–019–00010–1)	28.00	Jan. 1, 1993
53–209	(869–019–00011–9)	21.00	Jan. 1, 1993
210–299	(869–019–00012–7)	30.00	Jan. 1, 1993
300–399	(869–019–00013–5)	15.00	Jan. 1, 1993
400–699	(869–019–00014–3)	17.00	Jan. 1, 1993
700–899	(869–019–00015–1)	21.00	Jan. 1, 1993
900–999	(869–019–00016–0)	33.00	Jan. 1, 1993
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1060–1119	(869–019–00018–6)	13.00	Jan. 1, 1993
1120–1199	(869–019–00019–4)	11.00	Jan. 1, 1993
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1500–1899	(869–019–00021–6)	17.00	Jan. 1, 1993
1900–1939	(869–019–00022–4)	13.00	Jan. 1, 1993
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1950–1999	(869–019–00024–1)	32.00	Jan. 1, 1993
2000–End	(869–019–00025–9)	12.00	Jan. 1, 1993
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10 Parts:			
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CFR Index and Findings Aids	(869-019-00053-4)	36.00	Jan. 1, 1993
Complete 1993 CFR set		775.00	1993

Title	Stock Number	Price	Revision Date
Microfiche CFR Edition:			
Complete set (one-time mailing)		188.00	1990
Complete set (one-time mailing)		188.00	1991
Complete set (one-time mailing)		188.00	1992
Subscription (mailed as issued)		223.00	1993
Individual copies		2.00	1993

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

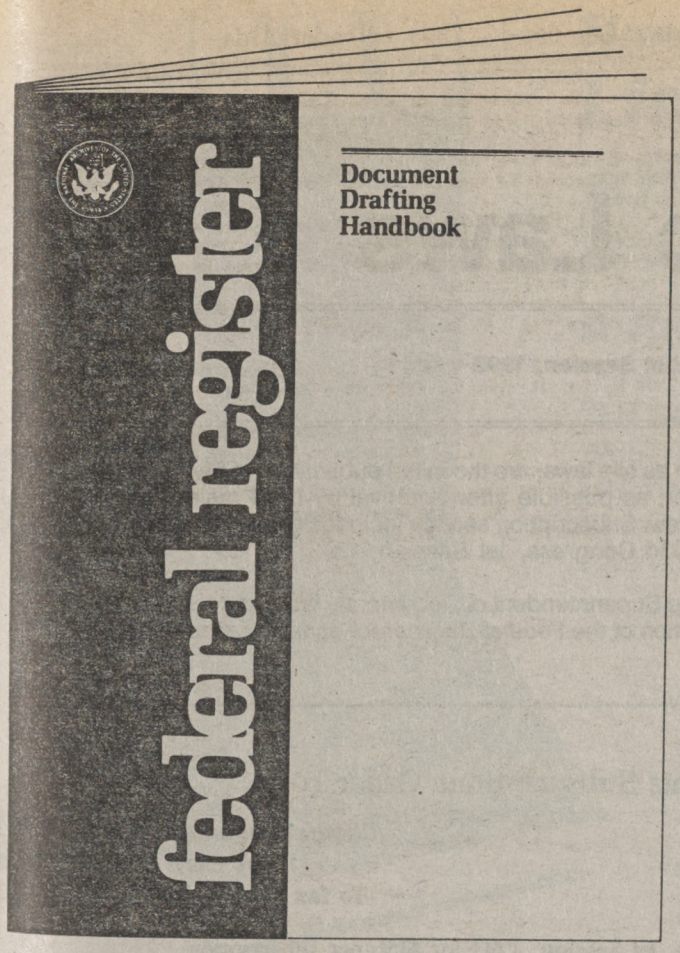
[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 1991 to September 30, 1992. The CFR volume issued October 1, 1991, should be retained.



Federal Register Document Drafting Handbook

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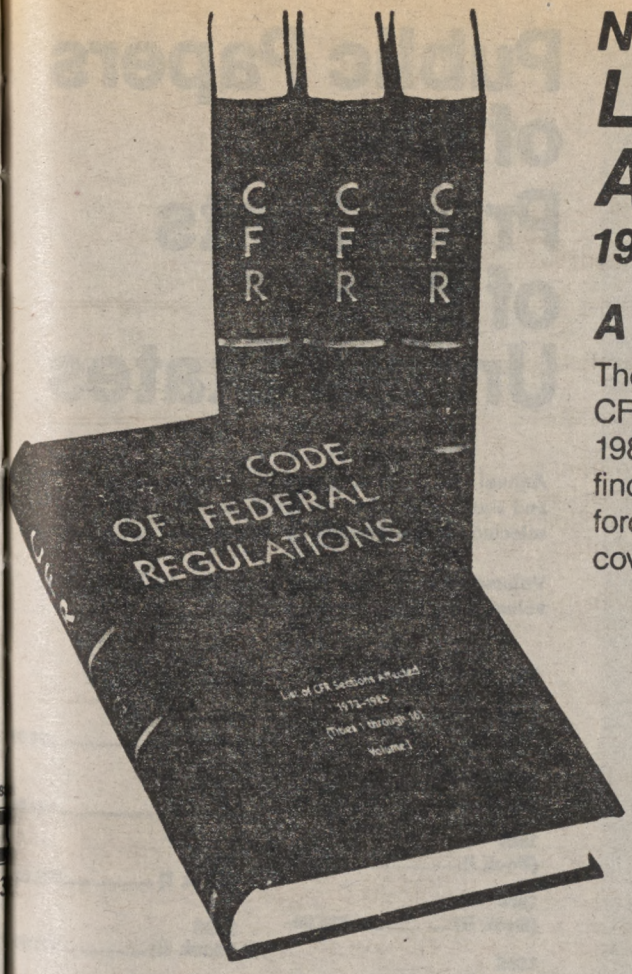
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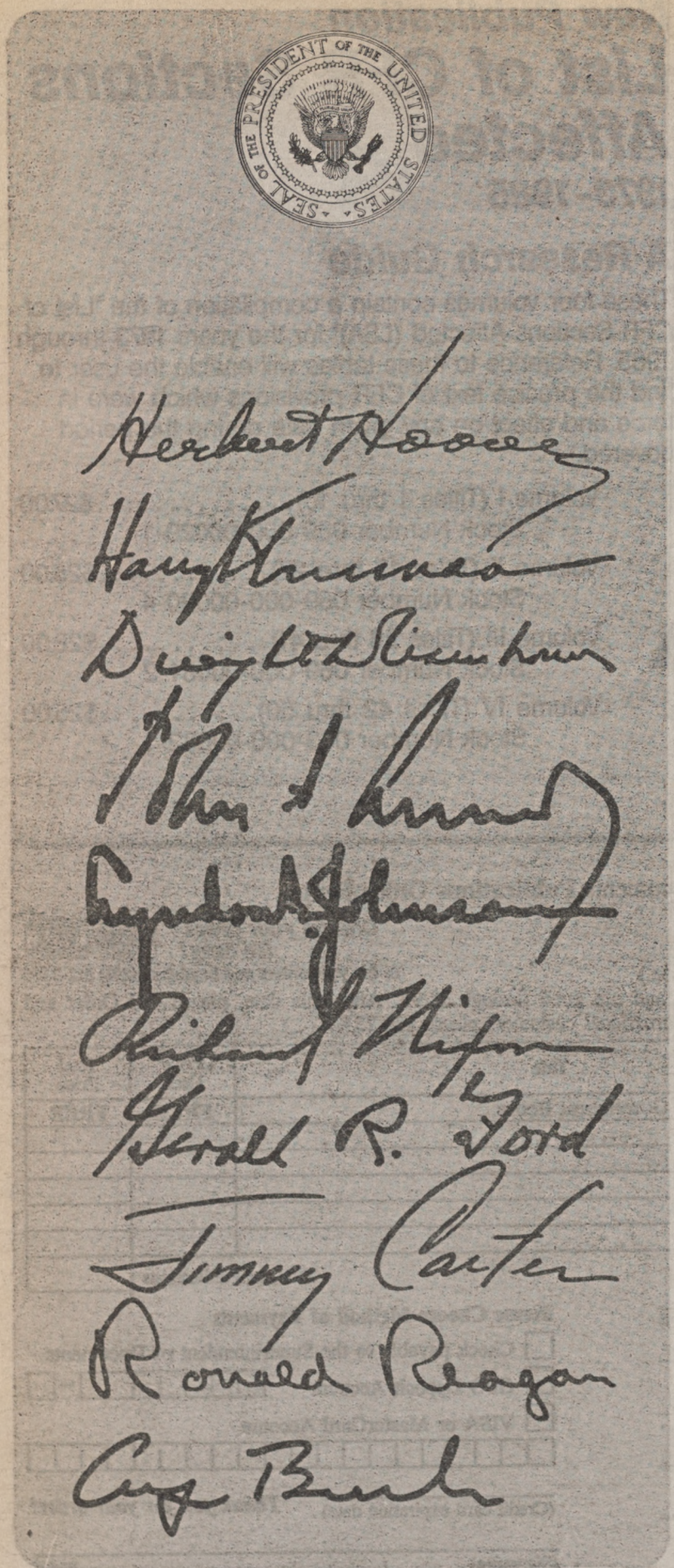
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