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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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: January 13 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)

RESERVATIONS: 202–523–4538

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–75–AD; Amendment 39–8776; AD 93–25–11]

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Short Brothers Model SD3–60 series airplanes, that currently requires repetitive inspections to detect loose, missing, or failed rivets in the fuselage attachment fitting area of the rear spar web of the horizontal stabilizer, and repair, if necessary. This amendment requires revising the inspection procedure required by the existing AD. This amendment is prompted by data indicating that the inspection procedure must be revised to require that the rear spar web is inspected at its aft face. The actions specified by this AD are intended to prevent loss of the structural integrity of the horizontal stabilizer attachment to the fuselage.

DATES: Effective January 26, 1994.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of March 2, 1993 (58 FR 6085).

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 93–01–06, Amendment 39–8460 (58 FR 6085, January 26, 1993), which is applicable to certain Short Brothers Model SD3–60 series airplanes, was published in the **Federal Register** on August 16, 1993 (58 FR 43306). The action proposed to supersede AD 93–01–06 to require repetitive inspections to detect loose, missing, or failed rivets in the fuselage attachment fitting area of the aft face of the rear spar web of the horizontal stabilizer, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 51 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $22,440, or $440 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will 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 final rule does 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 "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from 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.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 39–8460 (58 FR 6085, January 26, 1993), and by adding a new airworthiness directive (AD), amendment 39–8776, to read as follows:

93–25–11 Short Brothers, PLC: Amendment 39–8776. Docket 93–NM–75–AD. Supersedes AD 93–01–06, Amendment 39–8460.

Applicability: Model SD3–60 series airplanes; serial numbers SH3601 through SH3691 inclusive, and SH3694; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the structural integrity of the horizontal stabilizer attachment to the fuselage, accomplish the following:

(a) Perform a visual inspection at the aft face of the rear spar web-to-boom riveting, top and bottom, between the fuselage attach fittings at 12.5 inches left and right of the airplane center line to detect loose, missing, or failed rivets in accordance with Shorts Service Bulletin SD360–55–16, dated April

1988, prior to the times specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable. Repeat the inspection thereafter at intervals not to exceed 1,000 landings.

(1) For airplanes on which the inspections (at the forward face of the rear spar web-to-boom riveting) required by AD 93–01–06, amendment 39–8460, have been accomplished previously and on which Modification 7948 has not been accomplished: Within 1,000 landings after the last inspection accomplished in accordance with AD 93–01–06, or within 100 landings after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the inspections required by AD 93–01–06 have not been accomplished previously and on which Modification 7948 has not been accomplished: Inspect prior to the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD, as applicable.

(i) For airplane serial numbers SH3680 through SH3691 inclusive, and SH3694; and for airplanes affected by this AD that have only used a 15-degree takeoff flap setting since before or upon reaching 5,000 landings: Prior to the accumulation of 12,000 total landings, or within 100 landings after the effective date of this AD, whichever occurs later.

(ii) For airplanes other than those affected by paragraph (a)(2)(i) of this AD: Prior to the accumulation of 8,000 total landings, or within 100 landings after the effective date of this AD, whichever occurs later.

(b) If any defective rivet is found as a result of any inspection required by this AD, prior to further flight, repair in accordance with Part II of Shorts Service Bulletin SD360–55–16, dated April 1988. Following that repair, continue to perform the repetitive inspections required by paragraph (a) of this AD.

(c) Modification of the horizontal stabilizer spar webs (Modification 7948) in accordance with Shorts Service Bulletin SD360–55–12, Revision 2, dated November 1986, constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections, repair, and modification shall be done in accordance with the following Shorts service bulletins, which contain the specified effective pages:

Service bulletin and date	Page No.	Revision level shown on page	Date shown on page
SD360–55–16, April 1988	1–7	Original	April 1988.
SD360–55–12, Revision 2, November 1986	1, 4–5, 7–44	2	November 1986.
	2–3, 6	Original	April 1986.

The incorporation by reference of these documents was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of March 2, 1993 (58 FR 6085). Copies may be obtained from Short Brothers PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 26, 1994.

Issued in Renton, Washington, on December 20, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–31431 Filed 12–23–93; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Parts 229 and 232

Guides for Advertising Fallout Shelters and Radiation Monitoring Instruments

AGENCY: Federal Trade Commission.

ACTION: Elimination of guides.

SUMMARY: Because there is little advertising or consumer demand for home civil defense structures for protection against nuclear fallout or blast from nuclear weapons, or for home civil defense instruments for measuring the accumulation or intensity of gamma radiation from a nuclear attack, the Commission has determined that it is in the public interest to eliminate the Guides for Advertising Fallout Shelters and the Guides for Advertising Radiation Monitoring Instruments.

The Guides were adopted to encourage voluntary compliance with the law by businesses whose practices in the promotion of home civil defense fallout or blast shelters or home civil defense radiation monitoring devices are subject to the jurisdiction of the Commission. Although the Commission is eliminating the Guides, proceedings still may be brought against businesses under section 5(a)(1) of the Federal Trade Commission Act for engaging in unfair or deceptive acts or practices in the advertising or sale of these products.

EFFECTIVE DATE: December 27, 1993.

ADDRESSES: Requests for copies of this document should be sent to the Public Reference Branch, room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Joel N. Brewer, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–2967.

SUPPLEMENTARY INFORMATION:

I. Introduction

As a part of its periodic review of the regulatory and economic impact of the Commission's rules and guides, on September 11, 1992, the Commission invited comment on the Fallout Shelter and the Radiation Monitoring Guides.[1] The notice contained the six standard regulatory review questions the Commission has determined to use during its periodic review program.[2] In response, the Commission received one comment from a manufacturer of radiation detection devices.[3] In order to obtain additional information upon which the Commission could base its actions, staff elicited additional comments from two state public health

[1] "Request for Comments Concerning Guides for Advertising Fallout Shelters and Guides for Advertising Radiation Monitoring Instruments," 57 FR 41705 (Sept. 11, 1992); P924218, A–1, p. 41705. The record in this proceeding has been designated P924218 in the Commission's Public Reference Branch. A copy of the above referenced request for comments is designated document A–1, and is filed in a single volume labeled P924218. There are three categories, "A," "B," and "G" for the materials in this volume.

[2] The Commission's questions with respect to guides relate to their economic impact and continuing relevance, any burdens of compliance with them, any changes needed to minimize their economic impact, their relation with other federal or state laws or regulations, and any changed conditions since they were issued and the effect of these changes on them.

[3] Robert Gallagher, President, Nuclear Sources & Services, Inc., Houston, Texas, P924218, G–1 (Sept. 22, 1992).

officials,[4] two manufacturers or sellers of fallout shelters or radiation detection devices,[5] and two experts in radiation detection and radiation safety programs.[6] On the basis of these and other materials in the record, the Commission has determined to eliminate the Guides.

II. Background

On December 9, 1961, the Commission adopted the Guides for Advertising Fallout Shelters ("Fallout Shelter Guides").[7] The Fallout Shelter Guides address advertising claims relating to the suitability of the products for their intended purposes or for other product features that are material to consumers. The Fallout Shelter Guides discourage the advertising of any home civil defense structure as a "fallout," "blast-resistant," or "limited blast-resistant" shelter if it fails to meet the minimal standards of identity for such structures established by the Office of Civil Defense ("OCD") of the Department of Defense.[8] The Fallout Shelter Guides also encourage the disclosures of any limits of protection from blast or fallout and that the structure must be properly installed to afford such protection. Finally, the Fallout Shelter Guides address claims relating to (among other things) the occupancy capacity of the shelter, its price or any savings available, the availability of financing, any guarantees, any suggestion that the structure is government approved, the extent of required maintenance, any alternative uses for the structure, and claims using scare tactics.

On May 28, 1963, the Commission adopted the Guides for Advertising Radiation Monitoring Instruments ("Radiation Monitoring Guides").[9] The Radiation Monitoring Guides address advertising claims relating to the suitability of the products for their intended purposes or for other product features that are material to consumers. The Radiation Monitoring Guides discourage the advertising of any home civil defense device for measuring the accumulation or intensity of gamma radiation from a nuclear attack if it fails to meet the minimal standards of identity for the device established by FEMA.[10] The Radiation Monitoring Guides also encourage the seller to disclose when any device fails to meet FEMA standards. Finally, the Guides address claims relating to radiation monitoring devices which would be impractical for home civil defense use, any suggestion (other than that the product meets FEMA standards) that the product is government approved, the product's durability or reliability, and the ease of operating, interpreting, calibration or maintaining the device.

III. Review of the Guides

The nature of the products subject to the Fallout Shelter and Radiation Monitoring Guides and the problems they are meant to solve are such that any deceptive or unfair advertising for these products would be difficult for consumers to evaluate independently. For example, for a structure to qualify as a home civil defense fallout shelter, FEMA and the Fallout Shelter Guides require that it afford at least a protection factor ("PF") from gamma radiation from nuclear fallout of 40, meaning that the occupant would be exposed to a dose 1/40th or less than that of the unprotected person.[11] Among other things, the PF of a fallout shelter is affected by the exterior wall thickness and aperture percentage; the shelter's height above the contaminated plane or the percentage of its wall exposure above the contaminated plane; the percentage of its perimeter shielded by adjacent buildings, walls or earth berms; its interior partitions; and the roof area and the total roof overhead mass thickness. Although FEMA provides a graphical solution for determining the PF of a shelter or shelter plan,[12] individuals who are not architects or engineers would find it difficult to determine the PF themselves or evaluate the accuracy of any representations of their builders that their shelters in fact meet the minimal standards.[13]

Similarly, protection from the effects of blast from a nuclear explosion can be provided only by structures strong enough to resist the pressure of the blast wave and whose entryways and ventilation and exhaust conduits can be sealed to prevent the blast wave from entering the structures that way.[14] The Fallout Shelter Guides provide that a shelter characterized as "blast-resistant" must be capable of withstanding a blast overpressure of at least 25 pounds per square inch ("psi"), and a "limited blast-resistant" shelter must be capable of withstanding a pressure of at least 5 psi.[15] Although FEMA provides model building specifications for fallout shelters with given blast capacities,[16]

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[4] Greta J. Dicus, Director, Arkansas Department of Health, Division of Radiation Control and Emergency Management, P924218, B–5 (Jan. 8, 1993); and Ohio Emergency Management Agency, P924218, B–9 (Jan. 21, 1993).

[5] Susan Skinner, President, S.E. International, Inc., USA, Summertown, Tennessee, P924218, B–7 (Jan. 11, 1993) (seller of hand held radiation detectors); and Dick Mankamyer, President, The Survival Center, McKenna, Washington, P924218, B–8 (Jan. 14, 1993) (manufacturer of fallout shelters and accessories).

[6] Ken L. Swinth, Pacific Northwest Laboratories, Life Sciences/Health Physics Department, Richland, Washington, P924218, B–4 (Jan. 7, 1993); and Carl L. Granlund, Manager, Technical Services, Johns Hopkins Institutions, Occupational Health and Safety Radiation Control Unit, Baltimore, Maryland, P924218, B–6 (Jan. 11, 1993).

[7] 26 FR 11826. The Fallout Shelter Guides took effect immediately upon their publication in the FR. Originally appearing as section 14.5 of the Commission's Administrative Interpretations, the Guides were later recodified as 16 CFR part 229, 32 FR 15529 (Nov. 8, 1967).

[8] Standards of identity for both fallout shelters and radiation monitoring devices were originally set by OCD, whose functions were transferred to the Director of the Federal Emergency Management Agency ("FEMA") in 1979. See, 44 FR 43242 (July 20, 1979). At the request of FEMA, on March 16, 1983, the Commission amended the Radiation Monitoring Guides to refer to FEMA instead of to OCD. 48 FR 11104. Although FEMA also sets the standards of identity for home, commercial and public fallout and blast shelters (see, *e.g.*, "Standards for Fallout Shelters," FEMA doc. TR–87 (Sept. 1979), P924218, B–10; "Protective Construction," FEMA doc. TR–39 (June 1986), P924218, B–12; and "Home Blast Shelter," FEMA doc. H–12–3 (Dec. 1990), P924218, B–13), the Fallout Shelter Guides still refer to OCD rather than to FEMA.

[9] 28 FR 5257. The Radiation Monitoring Guides took effect immediately upon publication in the FR. Originally appearing as section 14.9 of the Commission's Administrative Interpretations, the Guides were later recodified as 16 CFR part 232, 32 FR 15533 (Nov. 8, 1967).

[10] See, *supra*, fn. 8.

[11] P924218, B–12, p. 10; 16 CFR 229.0(a).

[12] P924218, B–12, pp. 6–9.

[13] Although local building licensing agencies will routinely review plans and inspect residential building projects for safety, they do not typically review the plans for assuring that the structure meets other standards. Telephone interview of Dave Ferro, Construction Plans Analyst, Montgomery County (MD) Department of Environmental Protection, Division of Development Services and Regulations (Sept. 22, 1993). Mr. Ferro said that neither the county nor the State require a home civil defense structure to meet standards other than building and utility safety standards. Although this represents only one of thousands of local licensing agencies nationally, the Commission has no basis for believing that this agency is atypical.

[14] P924218, B–13, p. 2.

[15] 16 CFR 229.0(b). The blast capacity of a blast or blast-resistant shelter is determined by determining its ability to withstand the overpressure created by blast, measured in psi above ambient atmospheric pressure. Even small 1–2 psi overpressures exert tremendous forces that exceed the loads most buildings are designed to carry and extend great distances from the point of a nuclear explosion. For example, the 12 psi blast pressure from a one megaton surface detonation will destroy all but specially designed and hardened facilities and 98% of life within 1.7 miles of ground zero; its 5–12 psi blast pressure will cause severe damage to commercial buildings and destroy 50% of life between 1.7 and 3 miles of ground zero; its 2–5 psi blast pressure will cause moderate damage to commercial buildings and severe damage to residences and destroy 5% and injure another 45% of life between 3 and 5 miles of ground zero; and its 1–2 psi blast pressure will cause light damage to commercial buildings and moderate damage to residences and injure 25% of life between 5 and 7 miles of ground zero. P924218, B–12, p. 5.

[16] For example, in document P924218, B–13, FEMA provides plans and specifications for a home

Continued

unskilled individuals would find it difficult to determine the blast capacity or the adequacy of the design of any given blast shelter. Accordingly, most consumers would have little basis for themselves evaluating the accuracy of representations by builders respecting the features of blast shelters.

Finally, because devices to measure the accumulation or intensity of gamma radiation from nuclear fallout serve no purpose except in a nuclear attack, it is to be expected that they will be stored for prolonged periods. Although evidence in electronic the record indicates that advances in technology have made it is less likely than in 1963 that there exist on the market any radiation monitoring devices that would fail to meet the definitional standards in the Radiation Monitoring Guides,[17] these devices require periodic maintenance and recalibration.[18] Given the possible unreliability of these instruments after long periods of storage and the probable inexperience or neglect of the individuals who would have to maintain them over a number of years and ultimately monitor them in a nuclear emergency, consumers would find it difficult to evaluate independently advertising claims relating tc their reliability.

Although the Guides would encourage industry members to refrain from making material product claims that are deceptive or unfair and that are inherently difficult for consumers to evaluate independently, on the basis of the comments and other information in the record the Commission has determined that the market for home civil defense blast or fallout shelters and devices for measuring the accumulation or intensity of gamma radiation from a nuclear attack is small and advertising for these products is rare. For example, Robert D. Gallagher, the president of a company that makes radiation monitoring devices, Nuclear Sources & Services, Houston, TX, stated:

> With Russia no [sic] in disarray you couldn't sell a fallout shelter or radiation instrument to the public even if you promised immortality in your advertising. Thus, the guides will have no economic impact no matter what restrictions are contained.[19]

The market for these products has shrunk as the threat of nuclear attack has diminished. Additionally, the Commission has received no complaints from consumers or industry members regarding the marketing of these products and has never brought an enforcement action against an industry member for making representations discouraged by the Guides or for failing to make disclosures encouraged by them.

Given the lack of a significant market for the products, the only argument for retaining the Guides is that it would be worthwhile to retain them in case the threat of nuclear attack were renewed. Ken Swinth commented, "it is probably not worth the cost to make changes, and if we have a threat of nuclear war it would be beneficial to have these guides 'on the books.'"[20] Susan Skinner made a similar observation.[21] However, the Commission is not persuaded that retaining these guides on the theory that they might someday be useful justifies retaining them. Accordingly, the Commission has determined that it is in the public interest to eliminate the Guides.

List of Subjects in 16 CFR Parts 229 and 232

Advertising; Fallout radiation protection; Home civil defense; Nuclear blast protection; Trade practices.

PARTS 229 and 232—[REMOVED]

The Commission, under authority of sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of title 16 of the Code of Federal Regulations by removing Parts 229 and 232.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–31439 Filed 12–23–93; 8:45 am]

BILLING CODE 6750–01–M

civil defense blast shelter capable of resisting a blast pressure of up to 15 psi.

[17] Comment of Carl L. Granlund, Manager of Technical Services, Johns Hopkins Institutions, Baltimore, MD, P924218, B–6, p. 1. The device for measuring the accumulated amount or dose of radiation is referred to by the Radiation Monitoring Guides as a "dosimeter." According to the Radiation Monitoring Guides the dosimeter must be capable of measuring, within an overall accuracy of plus or minus 25%, the accumulated gamma radiation from zero to at least 600 roentgens or from zero to 200 roentgens when the instrument's indicator can be reset to zero for further use. 16 CFR 232.1, examples 2 and 4. The device for measuring the intensity of gamma radiation is referred to by the Radiation Monitoring Guides as a "rate meter." According to the Guides the rate meter must not measure gamma radiation dose rates from 1 to 100 roentgens per hour, but give a positive indication when the dose rate is between 100 and 1000 roentgens per hour, plus or minus 35% of true gamma radiation intensity. 16 CFR 232.1(b), examples 1 and 3.

[18] FEMA requires that the devices be designed to operate accurately after a five year storage period, and be rugged enough to withstand extremes of heat and humidity. P924218, B–11, p. 2.

[19] P924218, G–1.

[20] P924218, B–4, p. 2.

[21] P924218, B–7.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8511]

RIN 1545–AS17

Lobbying Expense Deductions—Dues

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations revising the rules governing the deductibility of dues or other similar amounts paid to certain tax-exempt organizations that participate in political campaigns, or engage in lobbying or similar activities. Changes to the tax law were made by section 13222 of the Omnibus Budget Reconciliation Act of 1993. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective December 27, 1993.

For the date of applicability of these regulations, see § 1.162–20T(d).

FOR FURTHER INFORMATION CONTACT: James M. Guiry, 202–622–1585 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth temporary amendments to the Income Tax Regulations (26 CFR part 1) under section 162 of the Internal Revenue Code (Code) as amended by section 13222 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (107 Stat. 477). These rules relate to the deductibility of dues or other similar amounts that are allocable to lobbying and political expenses paid or incurred by certain tax-exempt organizations after December 31, 1993.

Explanation of Provisions

Section 13222 of OBRA 1993 amended section 162(e) of the Code, relating to the denial of deductions for certain lobbying and political expenditures, and section 6033 of the Code, relating to returns by exempt organizations. As amended, section 162(e) denies a deduction for certain lobbying and political expenditures described in section 162(e)(1). Section 162(e)(2) provides, however, that certain lobbying and political expenditures related to local legislation are not

subject to section 162(e)(1). Section 162(e)(3) denies a deduction for dues (or other similar amounts) paid to certain tax-exempt organizations to the extent a person paying those dues is notified under section 6033(e)(1)(A)(ii) that the dues are allocable to expenditures to which section 162(e)(1) applies. Section 162(e)(3) does not, however, apply to dues paid to tax-exempt organizations described in section 501(c)(3).

The amendments under section 13222 of OBRA 1993 apply to amounts paid or incurred after December 31, 1993.

The temporary regulations provide that, in accordance with section 162(e)(3), a taxpayer to whom an organization provides a notice described in section 6033(e)(1)(A)(ii) may not deduct that portion of the dues estimated in the notice to be allocable to nondeductible lobbying and political expenditures, whether or not the dues are paid on or before December 31, 1993.

If dues paid before January 1, 1994, are allocable to expenses paid or incurred by an organization before that date and, therefore, the taxpayer does not receive a notice under section 6033(e), the deductibility of such dues will be subject to prior law; that is, those dues will be subject to § 1.162–20(c)(3) of the regulations rather than § 1.162–20T(d).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is James M. Guiry, Office of Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.162–20T is added to read as follows:

§ 1.162–20T Expenditures attributable to lobbying, political campaigns, attempts to influence legislation, etc. and certain advertising (temporary).

(a) through (c) [Reserved]

(d) *Dues allocable to expenditures after 1993.* No deduction is allowed under section 162(a) for the portion of dues or other similar amounts paid by the taxpayer to an organization exempt from tax (other than an organization described in section 501(c)(3)) which the organization notifies the taxpayer under section 6033(e)(1)(A)(ii) is allocable to expenditures to which section 162(e)(1) applies. The preceding sentence applies to dues or other similar amounts whether or not paid on or before December 31, 1993. Section 1.162–20(c)(3) is superseded to the extent inconsistent with this paragraph (d).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 2, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–31404 Filed 12–23–93; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 1

[TD 8510]

RIN 1545–AR97

TeleFile Voice Signature Test

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains amendments to temporary regulations providing that an individual Federal income tax return completed as part of the TeleFile Voice Signature test will be treated as a return that is signed, authenticated, verified, and filed by the taxpayer as required by the Internal Revenue Code. The temporary regulations, as amended, affect those taxpayers who are eligible to, and elect to, file their individual Federal income tax returns for the 1993 calendar year by telephone under the test. The amendments are needed to implement the test for a second filing season. The text of the temporary regulations, as amended, also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject published elsewhere in this issue of the **Federal Register**.

EFFECTIVE DATE: The amendments to these regulations are effective January 13, 1994.

FOR FURTHER INFORMATION CONTACT: Celia Gabrysh, (202) 622–4940 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1348. The estimated annual burden per respondent varies from 5 minutes to 9 minutes, depending upon individual circumstances, with an average of 7 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the IRS. Individual respondents may require more or less time, depending on their particular circumstances.

For further information concerning this collection of information and where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing the burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Background

The IRS is actively engaged in efforts to broaden the base of the existing Electronic Filing Program and to reduce the filing burden of taxpayers. During the 1993 filing season, the IRS conducted the TeleFile Voice Signature test. The purpose of the test was to explore the technical feasibility, public acceptance, vulnerability, and other benefits and costs of giving certain taxpayers the option of filing their individual Federal income tax returns by telephone. The IRS will conduct this test again during the 1994 filing season.

The IRS will notify certain individuals who live in the Cincinnati District Office geographic area that they may be eligible to participate in the TeleFile Voice Signature test. Taxpayers eligible to participate in this test (which is again limited to one filing season) are single individuals who (1) are eligible to file Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, (2) reside within the geographic boundaries of the Cincinnati District Office, and (3) will file their 1993 Federal income tax returns from the same addresses from which they filed their 1992 Federal income tax returns. Under sections 6012, 6061, and 6065 of the Internal Revenue Code, each individual with gross income in excess of a specified amount must file an annual income tax return that (1) is signed in accordance with prescribed forms and instructions, and (2) except as otherwise provided by the IRS, contains (or is verified by) a written declaration that the return is made under penalties of perjury.

This document amends the Income Tax Regulations (26 CFR part 1) by amending temporary regulations §§ 1.6012–7T, 1.6061–2T and 1.6065–2T, which provide rules to facilitate the implementation of the TeleFile Voice Signature test. Generally, the temporary regulations provide that a taxpayer's individual Federal income tax return will be treated as having been properly filed if the taxpayer is eligible to participate in the TeleFile Voice Signature test and, pursuant to the instructions from the TeleFile system interactive voice computer, provides the requested information and the voice signature during the telephonic filing session.

Explanation of Provisions

A participating taxpayer will be treated as having filed an individual Federal income tax return at the time the TeleFile system interactive voice computer states to the taxpayer that the filing is completed. The taxpayer's voice signature will be treated as a signing and verification of the individual Federal income tax return by the taxpayer. By providing a voice signature during the telephonic filing session, the taxpayer will be treated as having made the income tax return under penalties of perjury.

These amendments are effective for returns filed by eligible taxpayers in the TeleFile Voice Signature test after January 12, 1994, and before April 16, 1994. No returns can be filed through the TeleFile Voice Signature test after April 15, 1994.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary regulations is Celia Gabrysh of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6012–7T is revised to read as follows:

§ 1.6012–7T Telephone return filing using voice signature (temporary).

(a) *In general.* For all purposes of the Internal Revenue Code, a return completed by an eligible taxpayer under the TeleFile Voice Signature test in accordance with the instructions provided over the telephone is an individual Federal income tax return filed at the time the TeleFile system interactive voice computer states to the taxpayer that the filing is completed. For provisions relating to the signing and verification of the TeleFile Voice Signature test returns made under this section, see §§ 1.6061–2T and 1.6065–2T, respectively.

(b) *Manner of filing return by telephone.* An eligible taxpayer who chooses to participate in the TeleFile Voice Signature test must dial the telephone number provided by the Internal Revenue Service from a touch-tone telephone. When an eligible taxpayer dials this telephone number, the TeleFile system interactive voice computer will give the taxpayer filing instructions. The taxpayer must provide all the information and a voice signature at the time and in the manner required by those instructions.

(c) *Eligible taxpayer defined.* An eligible taxpayer is a single individual who lives in the Cincinnati District Office geographic area, who is eligible to file Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, and whose current name and address appear on the mailing label attached to the taxpayer's tax package for the calendar year for which the Form 1040EZ is to be filed.

(d) *Address to which refunds are sent.* If a taxpayer who files a TeleFile Voice Signature test return is entitled to a refund, the taxpayer's refund will be sent to the address on the mailing label attached to the taxpayer's tax package.

(e) *Effective dates.* (1) This section is effective for—

(i) 1992 calendar year returns filed by eligible taxpayers in the TeleFile Voice Signature test after January 13, 1993, and before April 16, 1993; and

(ii) 1993 calendar year returns filed by eligible taxpayers in the TeleFile Voice Signature test after January 12, 1994, and before April 16, 1994.

(2) No returns can be filed under the TeleFile Voice Signature tests between April 16, 1993, and January 12, 1994, or after April 15, 1994.

Par. 3. Section 1.6061–2T is revised to read as follows:

§ 1.6061–2T Signing of returns by voice signature (temporary).

(a) *In general.* An eligible taxpayer who makes an income tax return under § 1.6012–7T in the TeleFile Voice Signature test is treated, for all purposes of the Internal Revenue Code, as having signed that return by providing the voice signature at the time and in the manner required by the instructions that are provided over the telephone by the TeleFile system interactive voice computer. For provisions relating to the verification of the TeleFile returns made under § 1.6012–7T, see § 1.6065–2T.

(b) *Effective dates.* This section is effective for—

(1) 1992 calendar year returns filed by eligible taxpayers in the TeleFile Voice Signature test after January 13, 1993, and before April 16, 1993; and

(2) 1993 calendar year returns filed by eligible taxpayers in the TeleFile Voice Signature test after January 12, 1994, and before April 16, 1994.

Par. 4. Section 1.6065–2T is revised to read as follows:

§ 1.6065–2T Verification of returns by voice signature (temporary).

(a) *In general.* An eligible taxpayer who makes an income tax return under § 1.6012–7T in the TeleFile Voice signature test, by providing the voice signature at the time and in the manner required by the instructions that are provided over the telephone by the TeleFile system interactive voice computer, is treated for all purposes of the Internal Revenue Code as having affirmed that the return is made under penalties of perjury and as having verified the return.

(b) *Effective dates.* This section is effective for—

(1) 1992 calendar year returns filed by eligible taxpayers in the TeleFile Voice Signature test after January 13, 1993, and before April 16, 1993; and

(2) 1993 calendar year returns filed by eligible taxpayers in the TeleFile Voice Signature test after January 12, 1994, and before April 16, 1994.

Dated: December 13, 1993.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–31409 Filed 12–23–93; 8:45 am]

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26 CFR Parts 1 and 602

[T.D. 8514]

RIN 1545–AO65

Methods of Accounting—Limitation on the Use of the Cash Receipts and Disbursements Method of Accounting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations under section 448 of the Internal Revenue Code of 1986 (the Code) relating to the limitation on the use of the cash receipts and disbursements method of accounting (cash method). The final regulations provide procedures for requesting the Commissioner's approval of an accounting method change required by section 448 and provide guidance concerning the adjustment to taxable income under section 481(a) required by the method change. Changes to the applicable law were made by the Tax Reform Act of 1986.

DATES: The regulations are effective December 27, 1993.

For dates of applicability of these regulations, see § 1.448–1(i) of the regulations.

FOR FURTHER INFORMATION CONTACT: Michael L. Gompertz, 202–622–4910, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–0152. This collection of information consists solely of the required filing of Form 3115, Application for Change in Accounting Method. The estimated average annual burden per respondent is 58 hours.

This estimate is an approximation of the average time expected to be necessary for a collection of information. It is based on such information as is available to the Internal Revenue Service. Individual respondents may require more or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On June 16, 1987, the Internal Revenue Service published in the **Federal Register** (52 FR 22764) § 1.448–1T of the temporary Income Tax Regulations as T.D. 8143 in response to the enactment of section 448 of the Code by section 801(a) of the Tax Reform Act of 1986 (Pub. L. No. 99–514, 100 Stat. 2345). A notice of proposed rulemaking by cross-reference to the temporary regulations was published in the **Federal Register** (52 FR 22795) on June 16, 1987 (the 1987 regulations). Several comments on the 1987 regulations were received concerning § 1.448–1T(g), relating to the treatment of an accounting method change required by section 448 and the timing rules for the section 481(a) adjustment, § 1.448–1T(h), relating to the procedures for making a change from the cash method required by section 448, and § 1.448–1T(i), relating to the effective date of section 448. However, a public hearing on § 1.448–1T(g), (h), and (i) was neither requested nor held.

On January 7, 1991, amendments to paragraphs (g) and (h) of § 1.448–1T were published in the **Federal Register** (56 FR 484) as T.D. 8329 (the 1991 regulations). A corresponding notice of proposed rulemaking was also published in the **Federal Register** (56 FR 508) of January 7, 1991. No comments were received on the 1991 regulations, and a public hearing was not requested.

Under section 7805(e), the 1991 regulations expire within three years after their issuance. To provide continuing guidance concerning accounting method changes required by section 448, this document adopts, with modifications, § 1.448–1T(g), (h), and (i) as final regulations.

Explanation of Provisions and Discussion of Public Comments

Section 448 of the Code generally prohibits the use of the cash method by C corporations, partnerships with a C corporation partner, and tax shelters. In general, section 448 is effective for taxable years beginning after December 31, 1986.

Paragraphs (g) and (h) of § 1.448–1 of the regulations provide procedures for making a change from the cash method required by section 448 and provide guidance concerning the adjustment to taxable income required by section 481(a). The procedures a taxpayer must follow differ depending on whether the change from the cash method is timely or untimely and whether the change is to an overall accrual method or to a method other than an overall accrual method (a special or hybrid method).

Timely Change From the Cash Method

A timely change to an overall accrual method is accomplished by attaching a current Form 3115 to a timely filed income tax return (including extensions) for the first taxable year in which the taxpayer is subject to section 448. The taxpayer must type or legibly print at the top of page 1 of Form 3115: "Automatic Change to Accrual Method—Section 448." In addition, the taxpayer must attach a statement to Form 3115 setting forth the period over which the section 481(a) adjustment will be taken into account and the basis for that conclusion. A taxpayer that follows these procedures has the Commissioner's consent to the change in method of accounting.

A timely change to a special or hybrid method is generally accomplished by submitting Form 3115 to the appropriate office of the Internal Revenue Service by the due date prescribed in the applicable administrative procedure. (Under Rev. Proc. 92–20, 1992–1 C.B. 685, which is the current applicable administrative procedure, Form 3115

generally must be filed with the National Office of the Internal Revenue Service within 180 days after the beginning of the year of change.) However, under a special rule, Form 3115 may be submitted to the National Office on or before 30 days after the close of the first taxable year in which the taxpayer is subject to section 448 if the events or circumstances precluding continued use of the cash method occur after the 180th day of the taxable year. See § 1.448–1T(h)(3)(i) and (4)(ii). The taxpayer must type or legibly print at the top of page 1 of Form 3115: "Change to a Special Method of Accounting—Section 448."

A commentator recommended that the deadline for submitting Form 3115 under this special rule be changed from 30 days after year end to 90 days after year end. The Internal Revenue Service and the Treasury Department believe that an extension of the filing deadline is not warranted because § 1.448–1T(h)(4)(ii) already provides a deadline for filing Form 3115 later than the generally applicable deadline established by § 1.446–1(e)(3)(i), under which Form 3115 must be submitted within 180 days after the beginning of the taxable year. Also, a taxpayer that has missed the 30-day deadline is eligible to request relief under § 301.9100–1 of the Regulations on Procedure and Administration. Thus, there is no need to extend the deadline.

In general, a taxpayer that makes a timely change from the cash method generally takes the section 481(a) adjustment into account ratably (beginning with the year of the change) over the shorter of (a) four taxable years or (b) the number of taxable years the taxpayer used the cash method. A hospital that makes a timely change generally takes the section 481(a) adjustment into account ratably (beginning with the year of the change) over 10 years. The final regulations define hospital in a manner essentially identical to the definition in the temporary regulations. However, a slight change in the language of the regulations was required because the name of the organization that accredits hospitals has been changed from the Joint Commission of Accreditation of Hospitals (JCAH) to the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

A commentator suggested that all taxpayers, not only cooperatives described in section 1381(a), should have the option of taking into account a positive section 481(a) adjustment entirely in the year of the change from the cash method. However, this suggestion is not consistent with the legislative history of section 448, which indicates that the rules of Rev. Proc. 84–74, 1984–2 C.B. 736, are generally used to determine the timing of a section 481(a) adjustment. See H.R. Conf. Rep. 841, 99th Cong., 2d Sess. II–288, 289 (1986). Rev. Proc. 84–74 (which was subsequently superseded by Rev. Proc. 92–20) did not generally permit taxpayers to elect to take a positive section 481(a) adjustment into account entirely in the year of change. Accordingly, this comment has not been adopted. However, the final regulations permit taxpayers to elect to use a shorter adjustment period than would otherwise be allowed if the entire net section 481(a) adjustment (whether positive or negative) is a de minimis amount as determined under the applicable administrative procedure issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method (currently, Rev. Proc. 92–20). See section 8.01(1) of Rev. Proc. 92–20 allowing taxpayers to elect a one-year adjustment period if the adjustment is de minimis (less than $25,000).

The temporary regulations require a taxpayer which ceases to engage in the trade or business to which the section 481(a) adjustment relates before the end of the maximum four-year adjustment period (or, in the case of a hospital, the 10-year adjustment period) to take into account the balance of that section 481(a) adjustment in the year of cessation. However, the acceleration of the section 481(a) adjustment required by the cessation of trade or business rule does not apply if the taxpayer is acquired in a section 381 transaction, and the acquiring corporation continues to engage in the trade or business to which the section 481(a) adjustment relates.

The final regulations clarify that a taxpayer that terminates its existence ceases to engage in the trade or business. The final regulations also replace the rule concerning cessation of trade or business in a section 381 transaction with the rules concerning cessation of the trade or business set forth in the applicable administrative procedure issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method (currently, Rev. Proc. 92–20). See section 8.03(2) of Rev. Proc. 92–20.

Untimely Change From the Cash Method

The final regulations provide that a taxpayer making an untimely change from the cash method must satisfy the general method change requirements of § 1.446–1(e)(3) (including any applicable administrative procedure that is prescribed under the authority of § 1.446–1(e)(3)(ii) after January 7, 1991, specifically for purposes of complying with section 448). Absent the publication of an administrative procedure that is prescribed under § 1.446–1(e)(3) specifically addressing compliance with section 448, a taxpayer making an untimely change must request a change under § 1.446–1(e)(3) subject to any terms and conditions (including the year of change) as may be imposed by the Commissioner. The final regulations delete the provisions in the 1991 regulations that a taxpayer making an untimely change from the cash method by filing Form 3115 after January 7, 1991, is generally subject to terms and conditions (including the year of change) designed to place the taxpayer in a position no more favorable than a taxpayer that timely complied with section 448. Under the final regulations, unless an administrative procedure is published specifically concerning method changes under section 448, a taxpayer subject to section 448 which makes an untimely method change under section 448 will, in general, be subject to the terms and conditions (including the year of change) applicable to a Category A method of accounting as set forth in Rev. Proc. 92–20 (or any successor revenue procedure).

Effective Date Rules of Section 448

A comment letter on the 1987 regulations suggested that § 1.448–1T(i), relating to the effective date of section 448, be modified to reflect the provisions of section 801(d)(3) of the Tax Reform Act of 1986. This suggestion has been adopted through the addition of paragraph (i)(3) to § 1.448–1 of the regulations.

The final regulations also provide a transitional rule for § 1.448–1(g), relating to the treatment of an accounting method change required by section 448 and the timing rules for the section 481(a) adjustment, and § 1.448–1(h), relating to the procedures for making a change from the cash method required by section 448. Under this transitional rule, § 1.448–1 (g) and (h) will not be adversely applied with respect to transactions entered into by the taxpayer before Decmber 27, 1993, to the extent the provisions of § 1.448–1 (g) and (h) were not reflected in § 1.448–1T (g) and (h).

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in

Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking published in the **Federal Register** on January 7, 1991 (56 FR 508) was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the notice on small business.

Drafting Information

The principal author of these regulations is James A. Orefice, formerly of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

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

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

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

Par. 2. Section 1.448–1 is added, and paragraphs (a) through (f) thereof are reserved.

Par. 3. Paragraphs (g), (h), and (i) of § 1.448–1T are redesignated as paragraphs (g), (h), and (i) of § 1.448–1 and are amended as follows:

1. Paragraph (g)(2)(ii)(B)(*1*) is amended by removing the language "Joint Commission of Accreditation of Hospitals" and adding in its place the language "Joint Commission on Accreditation of Healthcare Organizations or its predecessor" and by removing the language "JCAH" wherever it appears in that paragraph and adding in its place the language "JCAHO".

2. Paragraph (g)(2)(iii) is amended by removing the language "§ 1.466–1(e)(3)" from the second sentence and adding in its place the language "§ 1.446–1(e)(3)" and by removing the last sentence in that paragraph.

3. Paragraph (g)(3)(i) is amended by removing the language "(g)(3)(ii)" from the last sentence and adding in its place the language "(g)(2)(ii)".

4. Paragraph (g)(3)(iii) is revised.

5. Paragraph (g)(3)(iv) is added.

6. Paragraph (g)(5) is amended by removing the language "488" wherever it appears in the first and second sentences and adding in its place the language "448" and by removing the language "chosing" in the last sentence and adding in its place the language "choosing".

7. Paragraph (h)(4)(ii) is redesignated as paragraph (h)(3)(ii).

8. Paragraph (h)(4) is amended by removing the last sentence.

9. Paragraph (i)(1) and the third sentence of paragraph (i)(2)(i) are revised.

10. Paragraphs (i)(3) and (i)(4) are added.

11. The reserved, revised, and added provisions read as follows:

§ 1.448–1 Limitation on the use of the cash receipts and disbursements method of accounting.

(a) through (f). [Reserved]

(g) * * *

(3) * * *

(iii) *Cessation of trade or business.* If the taxpayer ceases to engage in the trade or business to which the section 481(a) adjustment relates, or if the taxpayer operating the trade or business terminates existence, and such cessation or termination occurs prior to the expiration of the adjustment period described in paragraph (g)(2) (i) or (ii) of this section, the taxpayer must take into account, in the taxable year of such cessation or termination, the balance of the adjustment not previously taken into account in computing taxable income. For purposes of this paragraph (g)(3)(iii), the determination as to whether a taxpayer has ceased to engage in the trade or business to which the section 481(a) adjustment relates, or has terminated its existence, is to be made under the principles of § 1.446–1(e)(3)(ii) and its underlying administrative procedures.

(iv) *De minimis rule for a taxpayer other than a cooperative.* Notwithstanding paragraph (g)(2)(i) and (ii) of this section, a taxpayer other than a cooperative (within the meaning of section 1381(a)) that is required to change from the cash method by this section may elect to use, in lieu of the adjustment period described in paragraph (g)(2)(i) and (ii) of this section, the adjustment period for de minimis section 481(a) adjustments provided in the applicable administrative procedure issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method. A taxpayer may make an election under this paragraph (g)(3)(iv) only if—

(A) The taxpayer's entire net section 481(a) adjustment (whether positive or negative) is a de minimis amount as determined under the applicable administrative procedure issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method,

(B) The taxpayer complies with the provisions of paragraph (h)(2) or (3) of this section for its first section 448 year,

(C) The return for such year is due (determined with regard to extensions) after December 27, 1993, and

(D) The taxpayer complies with any applicable instructions to Form 3115 that specify the manner of electing the adjustment period for de minimis section 481(a) adjustments.

* * * * *

(i) *Effective date*—(1) *In general.* Except as provided in paragraph (i)(2), (3), and (4) of this section, this section applies to any taxable year beginning after December 31, 1986.

(2) *Election out of section 448*—(i) *In general.* * * * For rules relating to the making of such election, see § 301.9100–7T (temporary regulations relating to elections under the Tax Reform Act of 1986). * * *

* * * * *

(3) *Certain contracts entered into before September 25, 1985.* This section does not apply to a contract for the acquisition or transfer of real property or a contract for services related to the acquisition or development of real property if—

(i) The contract was entered into before September 25, 1985; and

(ii) The sole element of the contract which was not performed as of September 25, 1985, was payment for such property or services.

(4) *Transitional rule for paragraphs (g) and (h) of this section.* To the extent the provisions of paragraphs (g) and (h) of this section were not reflected in paragraphs (g) and (h) of § 1.448–1T (as set forth in 26 CFR part 1 as revised on April 1, 1993), paragraphs (g) and (h) of this section will not be adversely applied to a taxpayer with respect to transactions entered into before December 27, 1993.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101(c) is amended by adding an entry to the table to read as follows:

§ 602.101 [Amended]

"§ 1.448–1(g), (h), and (i).....1545–0152."

Par. 6. Section 602.101(c) is further amended by removing all entries in the table for § 1.448–1T.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 14, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–31406 Filed 12–23–93; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Parts 1 and 602

[T.D. 8509]

RIN 1545–AS15

Certain Elections Under the Omnibus Budget Reconciliation Act of 1993

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the time and manner of making certain elections under the Omnibus Budget Reconciliation Act of 1993. These regulations provide guidance to persons making the elections. The text also serves as the text of the notice of proposed rulemaking on this subject that is published in the Proposed Rules section of this issue of the **Federal Register.**

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: George Bradley, 202–622–8104 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For that reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1421. The estimated annual burden per respondent varies from 15 minutes to 45 minutes, depending on individual circumstances and the particular election involved, with an estimated average of 30 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

For further information concerning these collections of information, and where to submit comments on these collections of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble of the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register.**

Background

This document contains temporary regulations relating to elections under the following sections of the Internal Revenue Code of 1986 and the Omnibus Budget Reconciliation Act of 1993, (Pub. L. 103–66, 107 Stat. 312) (the Act):

Act section	Code section
13114	1044(a)
13150	108(c)(3)(C)
13206(d)	163(d)(4)(B)(iii)
13225	6655(e)(2)(C)

Not all election provisions contained in the Act are addressed by these regulations. Other elections will be the subject of separate guidance published by the Internal Revenue Service.

Special Analyses

It has been determined that these regulations are not significant rules as defined in Executive Order 12866. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these rules, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is George Bradley, Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, parts 1 and 602 of title 26 of the Code of Federal Regulations are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

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

§ 1.108(c)–1T also issued under the authority of 26 U.S.C. 108(d)(9) * * *

Par. 2. Section 1.108(c)–1T is added to read as follows.

§ 1.108(c)–1T Time and manner for making election under the Omnibus Budget Reconciliation Act of 1993 (temporary).

(a) *Description.* Code section 108(c)(3)(C), as added by section 13150 of the Omnibus Budget Reconciliation Act of 1993, allows certain noncorporate taxpayers to elect to treat certain indebtedness described in section 108(c)(3) that is discharged after December 31, 1992, as qualified real property business indebtedness. This discharged indebtedness is excluded from gross income to the extent allowed by Code section 108.

(b) *Time and manner for making the election.* The election described in this section must be made on the taxpayer's income tax return for the taxable year in which the discharge occurs. However, if the taxpayer establishes to the satisfaction of the Commissioner reasonable cause for failure to file the election with the taxpayer's original return, the taxpayer may file the election with an amended return or claim for credit or refund. The election is to be made on a completed Form 982 in accordance with that Form and its instructions.

(c) *Revocability of election.* The election described in this section is revocable with the consent of the Commissioner.

(d) *Transition rule.* If the taxpayer's income tax return has been filed or is due before March 28, 1994, the taxpayer

may make the election with an amended return filed before June 27, 1994.

(e) *Effective date.* The rules set forth in this section are effective December 27, 1993.

Par. 3. Section 1.163(d)–1T is added to read as follows.

§ 1.163(d)–1T Time and manner for making election under the Omnibus Budget Reconciliation Act of 1993 (temporary).

(a) *Description.* Code section 163(d)(4)(B)(iii), as added by section 13206(d) of the Omnibus Budget Reconciliation Act of 1993, allows an electing taxpayer to take all or a portion of certain net capital gains, attributable to dispositions of property held for investment, into account as investment income. As a consequence, the capital gains affected by this election are not eligible for the maximum capital gains rate of 28 percent. The election may be made for net capital gains recognized by non-corporate taxpayers during any taxable year beginning after December 31, 1992.

(b) *Time and manner for making the election.* The election under Code section 163(d)(4)(B)(iii) must be made on or before the due date (including extensions) of the income tax return for the taxable year in which the net capital gain is recognized. The election is to be made on Form 4952, Investment Interest Expense Deduction, in accordance with the form and its instructions.

(c) *Revocability of election.* The election described in this section is revocable with the consent of the Commissioner.

(d) *Transition rule.* If the taxpayer's income tax return has been filed or is due before March 28, 1994, the taxpayer may make the election with an amended return filed before June 27, 1994.

(e) *Effective date.* The rules set forth in this section are effective December 27, 1993.

Par. 4. Section 1.1044(a)–1T is added under the heading "Common Nontaxable Exchanges" to read as follows:

§ 1.1044(a)–1T Time and manner for making election under the Omnibus Budget Reconciliation Act of 1993 (temporary).

(a) *Description.* Code section 1044(a), as added by section 13114 of the Omnibus Budget Reconciliation Act of 1993, generally allows individuals and C corporations that sell publicly traded securities after August 9, 1993, to elect not to recognize certain gain from the sale if the taxpayer purchases common stock or a partnership interest in a specialized small business investment company (SSBIC) within the 60-day period beginning on the day the publicly traded securities are sold.

(b) *Time and manner for making the election.* The election under Code section 1044(a) must be made on or before the due date (including extensions) for the income tax return for the year in which the publicly traded securities are sold. The election is to be made by reporting the entire gain from the sale of publicly traded securities on Schedule D of the income tax return in accordance with instructions for Schedule D, and by attaching a statement to Schedule D showing—

(1) How the nonrecognized gain was calculated,

(2) The SSBIC in which common stock or a partnership interest was purchased,

(3) The date the SSBIC stock or partnership interest was purchased, and

(4) The basis of that SSBIC stock or partnership interest.

(c) *Revocability of election.* The election described in this section is revocable with the consent of the Commissioner.

(d) *Transition rule.* If the taxpayer's income tax return has been filed or is due before March 28, 1994, the taxpayer may make the election with an amended return filed before June 27, 1994.

(e) *Effective date.* The rules set forth in this section are effective December 27, 1993.

Par. 5. Section 1.6655(e)–1T is added to read as follows.

§ 1.6655(e)–1T Time and manner for making election under the Omnibus Budget Reconciliation Act of 1993 (temporary).

(a) *Description.* Code section 6655(e)(2)(C), as added by section 13225 of the Omnibus Budget Reconciliation Act of 1993, allows a corporate taxpayer to make an annual election to use a different annualization period to determine annualized income for purposes of paying any required installment of estimated income tax for a taxable year beginning after December 31, 1993.

(b) *Time and manner for making the election.* An election under Code section 6655(e)(2)(C) must be made on or before the date required for the payment of the first required installment for the taxable year. For a calendar or fiscal year corporation, Form 8842, Election to Use Different Annualization Periods for Corporate Estimated Tax, must be filed by the 15th day of the 4th month of the tax year for which the election is to apply. Form 8842 must be filed with the Internal Revenue Service Center where the corporation files its income tax return.

(c) *Revocability of election.* The election described in this section is irrevocable.

(d) *Effective date.* The rules set forth in this section are effective December 27, 1993.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. Section 602.101(c) is amended by adding the following to the table:

"1.108(c)–1T	1545–1421,
1.163(d)–1T	1545–1421,
1.1044(a)–1T	1545–1421,
1.6655(e)–1T	1545–1421."

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 13, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–31411 Filed 12–23–93; 8:45 am]

BILLING CODE 4830–01–P

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26 CFR Parts 1 and 602

[TD 8506]

RIN 1545–AS20

Information Reporting for Discharges of Indebtedness

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the information reporting requirements of certain financial entities for discharges of indebtedness. The regulations reflect changes to the Internal Revenue Code made by section 13252 of the Omnibus Budget Reconciliation Act of 1993 (the Act). The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective January 1, 1994, and apply to discharges of indebtedness after December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Johnnel L. St. Germain (timing and amount of discharge) at (202) 622–4930 or Michael F. Schmit at (202) 622–4960, both of the Office of Assistant Chief Counsel (Income Tax and Accounting). Neither telephone number is toll-free.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public

procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1419. The time estimates for the reporting requirements contained in this regulation are reflected in the burden estimates for Form 1099–C.

For further information concerning this collection of information, and where to submit comments on the collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Background

This document contains amendments to the Income Tax Regulations (26 CFR parts 1 and 602) under section 6050P of the Internal Revenue Code (Code). Section 6050P requires certain financial entities to report discharges of indebtedness of $600 or more during any calendar year, and requires that reporting entities make a return at such time and in such form as the Secretary may by regulations prescribe. Thus, these temporary regulations are necessary to set forth the time, form, and manner of reporting under section 6050P, and to provide guidance relating to the discharge of indebtedness.

Explanation of Provisions

Reporting requirements

The temporary regulations provide that, in general, financial entities described in section 6050P(c)(1) of the Code (applicable financial entities) must report discharges of indebtedness of $600 or more on Form 1099–C. Form 1099–C must be filed with the appropriate Internal Revenue Service office designated in the instructions for that form on or before February 28 of the calendar year following the year in which a reportable discharge occurs. The information return must be filed for each individual or entity whose indebtedness is discharged, and must contain: (a) The name, address, and taxpayer identification number (TIN) of the debtor; (b) the date on which the indebtedness was discharged; (c) the amount of indebtedness discharged, the amount of indebtedness discharged that is interest, and the amount of indebtedness discharged that is penalties, administrative costs, and fines; (d) a description of the origin of the indebtedness; (e) an indication that the indebtedness was discharged in bankruptcy, if known; and (f) such other information as may be required by Form 1099–C or its instructions.

The regulations provide that section 6050P filers must also furnish a written statement to the individual or entity whose indebtedness is discharged. The written statement is to be furnished by January 31 of the year following the calendar year in which the indebtedness was discharged.

The regulations also provide guidance on when an indebtedness is considered discharged and the amount of indebtedness discharged for purposes of the information reporting requirements of section 6050P. The Service believes this guidance will help applicable financial entities comply with the section 6050P requirements to report this information.

When an Indebtedness Is Discharged

The regulations provide that, in general, indebtedness will be considered discharged for purposes of section 6050P(a)(2) upon the occurrence of an identifiable event indicating that the indebtedness will never have to be paid by the debtor, taking into account all the facts and circumstances. This is consistent with the present law determination of when discharge occurs. See, e.g., *Cozzi* v. *Commissioner*, 88 T.C. 435 (1987).

Under the regulations, an identifiable event includes, but is not limited to: (a) A discharge of indebtedness under title 11 of the United States Code; (b) an agreement between the applicable financial entity and the debtor to discharge all or a part of an indebtedness (including an agreement that results in an exchange under section 1001); and (c) a cancellation or extinguishment by operation of law that renders the debt unenforceable (such as the expiration of the statute of limitations for collection of the indebtedness). In contrast, a bookkeeping entry (such as a deduction for book or regulatory reporting purposes or a partial or full bad debt deduction for tax purposes) is not, of itself, an identifiable event. However, a bookkeeping entry is one of the facts and circumstances taken into account in determining whether a discharge has occurred. Similarly, collection activity by the applicable financial entity is one of the facts and circumstances taken into account in determining whether a discharge has occurred.

Amount of Indebtedness Discharged

For purposes of reporting the amount of indebtedness discharged, the regulations provide that indebtedness is any amount owed to an applicable financial entity, including principal, interest, penalties, administrative costs, and fines, to the extent the amount constitutes an indebtedness under section 61(a)(12). The amount of indebtedness discharged may represent all, or only a part, of the total amount owed to the applicable financial entity. The legislative history makes it clear that reporting is required whether or not the amount of debt discharged is includible in the debtor's gross income. H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 1, 671 (1993).

The regulations do not address whether the settlement of a disputed debt is a discharge of indebtedness within the meaning of section 61(a)(12) and, thus, is required to be reported under section 6050P. The Service welcomes comments on the treatment of the settlement of disputed debts under section 6050P.

Other Issues

The regulations provide that, if a discharge of indebtedness reportable under section 6050P occurs in a transaction also reportable under section 6050J (relating to foreclosures and abandonments of secured property), both Form 1099–A, Acquisition or Abandonment of Secured Property, and Form 1099–C, Cancellation of Debt, must be filed. The Service welcomes comments on coordinating the information reporting required under section 6050J with that required under section 6050P.

The regulations also provide rules relating to the use of magnetic media, TIN solicitations, recordkeeping requirements, and reporting with respect to multiple debtors.

Effective Date

The temporary regulations are effective for debts discharged after December 31, 1993.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for

comment on their impact on small businesses.

Drafting Information

The principal authors of these regulations are Michael F. Schmit and Johnnel L. St. Germain of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.6050P–1T also issued under 26 U.S.C. 6050P. * * *

Par. 2. Sections 1.6050P–0T and 1.6050P–1T are added to read as follows:

§ 1.6050P–0T Table of contents (temporary).

This section lists the major captions that appear in § 1.6050P–1T.

Section 1.6050P–1T Information reporting for discharges of indebtedness by certain financial entities (temporary).

(a) Reporting requirement.
(1) In general.
(2) No aggregation.
(3) Time and place for reporting.
(b) Date of discharge.
(1) In general.
(2) Identifiable events.
(i) In general.
(ii) Bookkeeping entries.
(3) Collection activity.
(c) Indebtedness.
(1) In general.
(2) Amounts not includible in income.
(d) Additional rules.
(1) Transactions reportable under section 6050J.
(2) Multiple debtors.
(i) In general.
(ii) Joint and several liability.
(3) Use of magnetic media.
(4) TIN solicitation requirement.
(i) In general.
(ii) Manner of requesting TIN.
(5) Recordkeeping requirements.
(e) Requirement to furnish statement.
(1) In general.
(2) Furnishing copy of Form 1099–C.
(3) Time and place for furnishing statement.
(f) Penalties.
(g) Effective date.

§ 1.6050P–1T Information reporting for discharges of indebtedness by certain financial entities (temporary).

(a) *Reporting requirement*—(1) *In general.* Any applicable financial entity (as defined in section 6050P(c)(1)) that discharges an indebtedness of any person (within the meaning of section 7701(a)(1)) of at least $600 during a calendar year must file an information return on Form 1099–C with the Internal Revenue Service. The return must include the following information—

(i) The name, address, and taxpayer identification number (TIN), as defined in section 7701(a), of each person whose indebtedness was discharged during the calendar year;

(ii) The date on which the indebtedness was discharged, as described in paragraph (b) of this section;

(iii) The amount of indebtedness discharged, the amount of indebtedness discharged that is interest, and the amount of indebtedness discharged that is penalties, administrative costs, and fines, as described in paragraph (c) of this section;

(iv) A description of the origin of the indebtedness, such as a student loan, a mortgage, or a credit card expenditure;

(v) An indication that the indebtedness was discharged in bankruptcy, if known; and

(vi) Any other information required by Form 1099–C or its instructions.

(2) *No aggregation.* For purposes of reporting under this section, multiple discharges of indebtedness of less than $600 during a calendar year are not required to be aggregated unless such separate discharges are pursuant to a plan to evade the reporting requirements of this section.

(3) *Time and place for reporting.* Returns required by this section must be filed with the Internal Revenue Service office designated in the instructions for Form 1099–C on or before February 28 of the year following the calendar year in which the indebtedness was discharged.

(b) *Date of discharge*—(1) *In general.* For purposes of this section, indebtedness will be considered discharged upon the occurrence of an identifiable event indicating that the indebtedness will never have to be paid by the debtor, taking into account all the facts and circumstances.

(2) *Identifiable events*—(i) *In general.* An identifiable event includes, but is not limited to—

(A) A discharge of indebtedness under title 11 of the United States Code;

(B) An agreement between the applicable financial entity and the debtor to discharge an indebtedness (including an agreement that results in an exchange under section 1001), provided that the last event necessary to effectuate the discharge has occurred; and

(C) A cancellation or extinguishment by operation of law that renders the debt unenforceable (such as the expiration of the statute of limitations for collection of the indebtedness).

(ii) *Bookkeeping entries.* A bookkeeping entry (such as a deduction for book or regulatory reporting purposes or a partial or full bad debt deduction for tax purposes) is not, of itself, an identifiable event. However, a bookkeeping entry is one of the facts and circumstances that is taken into account in determining whether a discharge has occurred.

(3) *Collection activity.* Collection activity by the applicable financial entity is one of the facts and circumstances that is taken into account in determining whether a discharge has occurred. For purposes of determining whether part of an indebtedness has been discharged, collection activity with respect to the remaining indebtedness is disregarded.

(c) *Indebtedness*—(1) *In general.* For purposes of reporting the amount of indebtedness discharged under paragraph (a)(iii) of this section, an indebtedness is any amount owed to an applicable financial entity including principal, interest, penalties, administrative costs, and fines, to the extent the amount constitutes an indebtedness for purposes of section 61(a)(12). The amount of indebtedness discharged may represent all, or only a part, of the total amount owed to the applicable financial entity.

(2) *Amounts not includible in income.* Discharged indebtedness described in paragraph (c)(1) of this section must be reported regardless of whether the debtor is subject to tax on the discharged debt. Thus, the entire amount of indebtedness discharged must be reported even if, for example, the debt was discharged in bankruptcy, and the reporting entity knows that the debtor qualifies for an exclusion under section 108.

(d) *Additional rules*—(1) *Transactions reportable under section 6050J.* If a discharged indebtedness reportable under this section occurs in a transaction reportable under section 6050J (relating to foreclosures and abandonments of secured property), both Form 1099–A, Acquisition or

Abandonment of Secured Property, and Form 1099–C, Cancellation of Debt, must be filed.

(2) *Multiple debtors*—(i) *In general.* In the case of a discharge of indebtedness involving more than one debtor, a return under this section must be filed for each debtor that had a debt of $600 or more discharged.

(ii) *Joint and several liability.* If multiple debtors are jointly and severally liable on an indebtedness, the return filed under this section for each debtor must reflect the entire amount of indebtedness discharged.

(3) *Use of magnetic media.* Any return required under section 6050P and this section must be filed on magnetic media to the extent required by section 6011(e) and the regulations thereunder. A failure to file on magnetic media when required constitutes a failure to file an information return under section 6721. Any person not required by section 6011(e) to file returns on magnetic media may request permission to do so under applicable regulations and revenue procedures.

(4) *TIN solicitation requirement*—(i) *In general.* All reasonable efforts must be made to obtain the TIN of the person whose indebtedness is discharged. For this purpose, the TIN may be obtained at the time the debtor incurs the debt. If the TIN is not obtained prior to the time the debt is discharged, the TIN must be requested of the debtor for purposes of meeting the requirements of this section.

(ii) *Manner of requesting TIN.* A TIN request made after the debt is discharged must clearly notify the debtor that the Internal Revenue Service requires the debtor to furnish its TIN, and that failure to furnish such TIN subjects the debtor to a $50 penalty imposed by the Internal Revenue Service. No particular form is required to solicit a TIN. A request made on Form W–9 satisfies the reasonable efforts requirement of this section. A TIN provided under this section is not required to be certified under penalties of perjury.

(5) *Recordkeeping requirements.* Any applicable financial entity required to file a return with the Internal Revenue Service under paragraph (a) of this section must also retain a copy of the return, or have the ability to reconstruct the data required to be included on the return under paragraph (a)(1) of this section, for at least four years from the date such return is required to be filed under paragraph (a)(3) of this section.

(e) *Requirement to furnish statement*—(1) *In general.* Any applicable financial entity required to file a return under paragraph (a) of this section must furnish to each person whose name is shown on such return a written statement that includes the following information—

(i) The information required by paragraph (a)(1) of this section;

(ii) The name, address, and TIN of the applicable financial entity required to file a return under paragraph (a) of this section; and

(iii) A legend identifying the statement as important tax information that is being furnished to the Internal Revenue Service, and informing the debtor about a possible negligence penalty or other sanction for failure to report taxable income.

(2) *Furnishing copy of Form 1099–C.* The requirement to provide a statement to the debtor will be satisfied if the applicable financial entity furnishes copy B of the Form 1099–C or a substitute statement that complies with the requirements of the current revenue procedure for substitute Forms 1099.

(3) *Time and place for furnishing statement.* The statement required by this paragraph (e) must be furnished to the debtor on or before January 31 of the year following the calendar year in which the indebtedness was discharged. The statement will be considered furnished to the debtor if it is mailed to the debtor's last known address.

(f) *Penalties.* The penalties for failure to comply with the requirements of this section are provided in sections 6721 through 6724.

(g) *Effective date.* This section applies to discharges of indebtedness after December 31, 1993.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by adding "1.6050P–1T .....1545–1419" in numerical order in the table.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: December 13, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–31308 Filed 12–23–93; 8:45 am]

BILLING CODE 4830–01–P

26 CFR Parts 47 and 48

[TD 8512]

RIN 1545–AS33

Amendments to the Temporary Fuel Floor Stocks Taxes Regulations and the Temporary Diesel Fuel Excise Tax Regulations Under the Omnibus Budget Reconciliation Act of 1993

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that amend the temporary regulations relating to the fuel floor stocks taxes (TD 8498) published in the **Federal Register** on November 29, 1993 (58 FR 62526) and the diesel fuel excise tax regulations (TD 8496) published in the **Federal Register** on November 30, 1993 (58 FR 63069). The amendments allow diesel fuel dyed past the terminal rack to qualify for exemption from the floor stocks tax and modify the requirements for dyeing of diesel fuel destined for nontaxable uses. They affect producers, marketers, and users of diesel fuel.

EFFECTIVE DATE: These regulations are effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Edward Madden (202) 622–4537 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Floor Stocks Tax

The Omnibus Budget Reconciliation Act of 1993 (Act) imposes a floor stocks tax on diesel fuel that is held by any person at the first moment of January 1, 1994, if (A) no tax was imposed on the fuel under section 4041(a) or 4091 of the Internal Revenue Code as in effect on December 31, 1993, and (B) tax would have been imposed by section 4081, as amended by the Act, on any prior removal, entry, or sale of the fuel had section 4081 applied to the fuel for periods before January 1, 1994. The rate of the January 1, 1994, floor stocks tax is 24.4 cents per gallon.

The temporary floor stocks tax regulations provide an exception to the January 1, 1994, floor stocks tax for diesel fuel that satisfied the requirements of section 4082 (relating to exemption from the diesel fuel tax for dyed fuel) at the time the diesel fuel was removed from the terminal.

Diesel Fuel Excise Tax; Exception for Dyed Fuel

The Act also provides, effective January 1, 1994, that diesel fuel that is

determined to be destined for a nontaxable use is not subject to tax if it is indelibly dyed in accordance with regulations prescribed by the Secretary. The temporary diesel fuel tax regulations prescribe the type and concentration of dyes that are to be used to dye diesel fuel.

Explanation of Provisions

Floor Stocks Tax

This document removes the requirement that diesel fuel be dyed at the time of its removal from the terminal to be exempt from the floor stocks tax. Thus, diesel fuel that meets the requirements of § 48.4082–1T(b) of the temporary regulations but is dyed past the terminal rack is not subject to the January 1, 1994, floor stocks tax.

Diesel Fuel Excise Tax; Exception for Dyed Fuel

This document modifies the description of the type of the blue dye required to be used for exempt high sulfur diesel fuel and the type of red dye required to be used for exempt low sulfur diesel fuel. It also modifies the concentration of blue dye allowed by the temporary regulations for a transitional period.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary regulations is Edward Madden, Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Parts 47 and 48

Excise taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 47 and 48 are amended as follows:

PART 47—FLOOR STOCKS TAXES

Paragraph 1. The authority citation for part 47 continues to read in part as follows:

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

§ 47.3–6T [Amended]

Par. 2. Section 47.3–6T(a) is amended by removing the language "Section" and adding in its place "Except as provided in § 47.3–7T, section".

Par. 3. Section 47.3–7T is amended by revising paragraph (b) to read as follows:

§ 47.3–7T Exception to the January 1, 1994, floor stocks tax (temporary).

* * * * *

(b) *Exception for dyed fuel.* The January 1, 1994, floor stocks tax does not apply to diesel fuel that satisfies the dyeing requirements of § 48.4082–1T(b) of this chapter by March 31, 1994, or by the time the fuel is sold by the person holding the fuel at the first moment of January 1, 1994, whichever is earlier. Thus, for example, diesel fuel held by a heating oil retailer for sale for use as home heating oil is exempt from the January 1, 1994, floor stocks tax if the retailer or another person has dyed the fuel and the fuel satisfies the requirements of § 48.4082–1T(b) of this chapter.

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 4. The authority citation for part 48 continues to read in part as follows:

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

Par. 5. Section 48.4082–1T is amended by revising paragraphs (b)(1) and (b)(2)(i) to read as follows:

§ 48.4082–1T Diesel fuel tax; exemption (temporary).

* * * * *

(b) *Dyeing and marking requirements*—(1) *Dyeing; high sulfur fuel.* Diesel fuel that is required to be dyed blue pursuant to the Environmental Protection Agency's high sulfur diesel fuel requirement (40 CFR 80.29) satisfies the dyeing requirement of this paragraph (b) only if it contains—

(i) For periods before April 1, 1994, the blue dye 1,4 dialkylamino-anthraquinone in a concentration of at least 1.2 pounds of active ingredient (exclusive of the solvent) per thousand barrels of diesel fuel and

(ii) For periods after March 31, 1994, the blue dye 1,4 dialkylamino-anthraquinone (Color Index Solvent Blue 98) in a concentration of at least 10 pounds of active ingredient (exclusive of the solvent) per thousand barrels of diesel fuel; or

(iii) Any other dye of a type and in a concentration that is approved by the Commissioner.

(2) * * *

(i) The dye red di-azo (Color Index Solvent Red 164) in a concentration of at least 5.6 pounds of active ingredient (exclusive of the solvent) per thousand barrels of diesel fuel; or

* * * * *

Approved: December 16, 1993.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–31405 Filed 12–23–93; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

RIN 2115–AA97

COTP Los Angeles-Long Beach, CA Regulation 93–013

AGENCY: Coast Guard, DOT.

ACTION: Final rule; cancellation.

SUMMARY: The Coast Guard is cancelling the following safety zones: 33 CFR 165.T1103 which was established February 9, 1990 for the cleanup effort in response to the T/V American Trader oil spill; 33 CFR 165.1113 which was established April 19, 1989 for the construction of Pier J in the Port of Long Beach; and 33 CFR 165.T1128 which was established May 11, 1983 around Oil Platform Esther in San Pedro Bay, California to protect vessels from hazards associated with its construction. Each of the above safety zones was meant to be temporary in nature, and are now, no longer necessary.

EFFECTIVE DATES: All three safety zones will terminate January 26, 1994.

FOR FURTHER INFORMATION CONTACT: LTJG K.leigh Johnson, Port Operations Department, Marine Safety Office Los Angeles-Long Beach, at (310) 980–4454.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking (NPRM) was not published for this regulation because the need for these safety zones has long since passed. No adverse comments are expected.

Drafting Information

The drafters of this regulation are LTJG K.leigh Johnson, project officer, Marine Safety Office Los Angeles-Long Beach and LCDR Craig Juckniess, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The circumstances which necessitated the establishment of these safety zones no longer exist: 33 CFR 165.T1103 (the cleanup operations for the T/V American Trader oil spill in 1990 have been completed; 33 CFR 165.1113 (the Pier J construction project in the Port of Long Beach is finished; 33 CFR 165.T1128 (the construction of Oil Platform Esther is completed).

This regulation is issued pursuant to 33 U.S.C 1231 as set out in the authority citation for all of part 165.

Regulatory Assessment

This regulation is not considered a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is expected to be so minimal that a full regulatory evaluation is unnecessary.

Collection of Information

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

Federalism

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

Economic Assessment and Certification

This proposal is not considered a significant regulatory action under Executive Order 12866 and is nonsignficant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.b.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping requirements, Security measures, Waterways.

Final Regulation

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

PART 165—[AMENDED]

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

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

§§ 165.T1103, 165.1113, and 165.T1128 [Removed]

2. In part 165, sections 165.T1103 Safety Zone: Port of Los Angeles/Long Beach, CA, 165.1113 San Pedro Bay, California—safety zone, and 165.T1128 Safety Zone: San Pedro Bay, California, are removed.

Dated: December 20, 1993.

J.B. Morris,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach, CA.

[FR Doc. 93–31518 Filed 12–23–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–93–153]

Safety Zone; New Bedford First Night Fireworks Display, New Bedford Harbor, New Bedford, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the New Bedford main ship channel south of the New Bedford/Fairhaven Bridge in the vicinity of New Bedford Channel Lighted Bell Buoy 16 (LLNR 16895), during the New Bedford First Night fireworks display. This safety zone is needed to protect vessels in the vicinity of the display, as well as personnel onboard these vessels, from potential hazards associated with the fireworks display.

EFFECTIVE DATES: This regulation is effective between the hours of 11 p.m. on December 31, 1993, and 1 a.m. on January 1, 1994, unless terminated sooner by the Captain of the Port Providence. There will be no rain date for this event.

FOR FURTHER INFORMATION CONTACT: LT J.C. Wong of Marine Safety Field Office New Bedford at (508) 999–0072.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are Lieutenant J.C. Wong, Project Manager for the Coast Guard Captain of the Port Providence, and Lieutenant Commander Stieb, Project Counsel for the First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 533, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Due to the date the application was received, there was not sufficient time to publish proposed rules in advance of the event. If the event, which is centered around a national holiday, were required to be postponed by publishing a NPRM, the event would be canceled. Publishing an NPRM and delaying the event would be contrary to the public interest since the fireworks display is to celebrate the New Year's national holiday.

Background and Purpose

On December 31, 1993, the city of New Bedford is sponsoring a fireworks display in celebration of New Year's Eve. The fireworks will be launched from a barge anchored in New Bedford Channel in the vicinity of New Bedford Channel Lighted Bell Buoy 16 (LLNR 16895), beginning at 12 midnight December 31, 1993. This safety zone will be established within a 350 yard radius around the fireworks barge. The fireworks display will last for approximately one half hour.

The purpose of this rulemaking is to establish a safety zone to prohibit vessels from transiting or anchoring in the area of New Bedford Harbor over which the fireworks will be launched, in order to protect these vessels and the persons onboard from potential damage, fire, or personal injury due to sparks and falling debris. The safety zone will be in effect between 11 p.m. on December 31, 1993, and 1 a.m. January 1, 1994, and will effectively close New Bedford Channel in the vicinity of New Bedford Channel Lighted Bell Buoy 16 (LLNR 16895) to all vessel traffic during this period.

Regulatory Assessment

This regulation is not a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a

Regulatory Evaluation is unnecessary. The entities most likely to be affected are pleasure craft wishing to view the fireworks from the water as well as fishing vessels and other commercial vessel traffic wishing to transit the area. Spectator vessels will still be able to view the fireworks from the water but will be required to do so at a distance more than 350 yards from the barge, which will not cause them undue hardship. Fishing vessels will be prohibited from transiting through the area while the zone is in effect. This will not have a significant economic impact on them because of the short duration of the zone and extensive advisories which will be made. Most of the fishermen who work out of New Bedford are aware that the fireworks and accompanying safety zone will be in place the evening of December 31, 1993. The commercial terminals in the harbor have been notified and any scheduled traffic will be aware of the safety zone. Thus, this safety zone should not cause undue hardship to any entity.

Small Entities

For the reasons discussed in the Regulatory Evaluation, the Coast Guard expects the economic impact of this rule to be minimal on all entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B, this is an action under Coast Guard statutory authority to protect public safety and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

List of Subjects in 33 CFR Part 165

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

Final Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165, as follows:

PART 165—[AMENDED]

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

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

2. A temporary § 165.T01–153 is added to read as follows:

§ 165.T01–153 Safety Zone: New Bedford Harbor, New Bedford, MA.

(a) *Location.* The following area is a safety zone: All waters in a 350 yard radius around the fireworks barge anchored in New Bedford Harbor, MA, in the vicinity of New Bedford Channel Lighted Bell Buoy 16 (LLNR 16895).

(b) *Effective date.* This regulation becomes effective between 11 p.m. on December 31, 1993, and 1 a.m. on January 1, 1994, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations governing safety zones contained in 165.23 apply.

Dated: December 14, 1993.

M.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 93–31520 Filed 12–23–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–93–151]

RIN 2115–AA97

Safety Zone Regulations; Kill Van Kull, NY and NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the waters near Bergen Point West Reach in the Kill Van Kull of New York and New Jersey. This zone imposes requirements in addition to the Regulated Navigation Area (RNA) already in existence for these waters. This zone is divided into two sections. The first is the southern portion of the channel which contains a work area where concentrated drilling and blasting will be conducted and no vessel is permitted to transit. The second section includes the remainder of the safety zone which surrounds the work area. Vessel passage in this section is permitted under the criteria set forth in these regulations. This action is necessary to protect the maritime community from the possible dangers and hazards to navigation associated with the extensive blasting and dredging operations which are being conducted in the work area of the channel and with the restrictions in channel width.

EFFECTIVE DATES: These regulations become effective at 8 a.m., December 7, 1993 and will terminate at 8 a.m., March 1, 1994, unless terminated sooner by Captain of the Port (COTP) NY.

FOR FURTHER INFORMATION CONTACT: LT R. Trabocchi of Captain of the Port, New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LT R. Trabocchi, Project Manager, Captain of the Port, New York, and CDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM would be contrary to the public interest since this regulation is intended to lessen the restrictions imposed on vessels transiting this area while maintaining requirements sufficient to ensure the safety of the port.

On May 28, 1993, the U.S. Coast Guard Captain of the Port, New York published a final rule (58 FR 30987) implementing requirements in addition to the RNA in existence in the Kill Van Kull located at 33 CFR 165.165. Due to comments received from the local industry, the Coast Guard Captain of the Port deems it appropriate to lessen the restrictions imposed by that final rule.

Background and Purpose

The area included within this safety zone is now regulated by regulations (1) through (7) of the RNA and the additional regulations implemented in this rulemaking. These safety zone regulations, in conjunction with the existing RNA regulations, are designed to allow vessels to transit safely and to protect the port and maritime community. Due to the experience gained through the duration of this project, the Coast Guard Captain of the Port, New York considered it

appropriate to lessen the restrictions previously imposed. The previous requirements for tugs read that all vessels 350 feet to 700 feet require one assist vessel and all vessels greater than 700 feet require two assist vessels when transiting from the Kill Van Kull (or vice versa) or from Newark Bay to the Arthur Kill (or vice versa) by way of the work area. The new requirement eliminates the need for assist vessels if under 700 feet and only requires vessels greater than 700 feet to have two assist vessels when transiting from Kill Van Kull to the Arthur Kill (or vice versa). This rule also removes the restrictions of having an assist vessel accompany all hawser tows. Removing these restrictions will create less of a burden on the vessel traffic needing to transit this area.

Regulatory Assessment

This regulation is not a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). In light of the regulations limited scope, the small size of the affected area, the minimal restrictions that are in place and the advance notice available to the community, the Coast Guard expects the economic impact of this rulemaking to be so minimal that a Regulatory Evaluation is unnecessary. The channel will not be completely closed therefore allowing vessels to still make their destination with minor restrictions. Vessel operators who do not wish to comply with the safety zone restrictions in this area of the KVK have the option of choosing an alternate route by taking the Arthur Kill to or from Newark Bay.

Small Entities

Because it expects the impact of these regulations to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

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

Regulations

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

PART 165—[AMENDED]

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

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

2. A temporary section 165.T01–151 is added to read as follows:

§ 165.T01–151 Safety Zone: Kill Van Kull, Bergen Point West Reach (Western Portion)—New York and New Jersey.

(a) *Location.* (1) The following area has been declared a Safety Zone: All waters of the Kill Van Kull West of the 074°08′00″W line of longitude, East of the 074°09′36″W line of longitude and South of the 40°39′06″N line of latitude.

(2) Within this safety zone exists a "Work Area" where concentrated drilling and blasting is being conducted. The "Work Area" includes all waters bounded by the following points:

Latitude	*Longitude*
40°38′24″ N	074°08′52″ W
40°38′24″ N	074°09′03″ W
40°38′31″ N	074°09′15″ W
40°38′37″ N	075°09′06″ W
40°38′31″ N	074°08′54″ W

thence to the point of the beginning.

The eastern and western edges of this "Work Area" are marked by lighted buoys set by the Coast Guard.

(b) *Effective date.* These regulations become effective at 8 a.m., on December 7, 1993 and will terminate at 8 a.m., March 1, 1994, unless terminated sooner by Captain of the Port, New York.

(c) *Regulations.* (1) *"Work Area":* In accordance with the general regulations in § 165.23 of this part, entry into or movement within the "Work Area" of the safety zone is prohibited unless authorized by the Captain of Port.

(2) For all other waters of the safety zone described in paragraph (a)(1) the COTP has included the following requirement in addition to paragraphs d(1) through (6) of § 165.165:

(i) Prior to entering this safety zone, the master, pilot, or operator of each vessel, 300 gross tons or greater and tugs with tows, shall notify Vessel Traffic Center (VTS) New York regarding the employment of assist vessels and intentions while transiting the safety zone.

(ii) Tug requirements: All vessels greater than 700 feet require two assist vessels when transiting from Kill Van Kull to the Arthur Kill (or vice versa).

(iii) Transit between Bergen Point West Reach and South of Shooters Island Reach is prohibited.

(3) *Waiver.* The Captain of the Port New York may, upon request, authorize a deviation from any regulation in this section if it is found that the proposed operations can be done safely. An application for deviation must be received at least 4 hours before the intended operation(s) and must state the need and describe the proposal.

Dated: December 7, 1993.

L.L. Hereth,

Acting Commander, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 93–31519 Filed 12–23–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–93–152]

RIN 2115–AA97

Safety Zone Regulations: Kill Van Kull, NY and NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the waters near Bergen Point West Reach in the Kill Van Kull of New York and New Jersey. This zone imposes requirements in addition to the Regulated Navigation Area (RNA) already in existence for these waters. This zone is divided into two sections. The first is the southern portion of the channel which contains a work area where concentrated drilling and blasting will be conducted and no vessel is permitted to transit. The second section includes the remainder of the safety zone which surrounds the work area. Vessel passage in this section is permitted under the criteria set forth in these regulations. This action is necessary to protect the maritime community from the possible dangers and hazards to navigation associated

with the extensive blasting and dredging operations which are being conducted in the work area of the channel and with the restrictions in channel width.

EFFECTIVE DATES: These regulations become effective at 8 a.m., December 7, 1993 and terminate at 8 a.m., March 1, 1994, unless terminated sooner by Captain of the Port (COTP) NY.

FOR FURTHER INFORMATION CONTACT: LT R. Trabocchi of Captain of the Port, New York (212) 668–7934.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LT R. Trabocchi, Project Manager, Captain of the Port, New York, and CDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM would delay this regulation's effective date and would be contrary to the public interest since immediate action is needed to protect the public from the dangers associated with this channel deepening project.

On April 7, 1992 a final rule was published as Part 165.165 of this title, which imposed a Regulated Navigation Area (RNA) over the entire Kill Van Kull (KVK) for the duration of a three year deepening project. On February 26, 1993, the Coast Guard COTP New York established a safety zone based on daily experiences and studies compiled since the initiation of the KVK dredging operations. This safety zone was needed to safeguard the users of this waterway and the immediate waterfront communities from the hazards associated with this ongoing project. On December 1, 1993 this safety zone inadvertently lapsed prior to publication of an amendment to extend its duration.

An amendment to extend the duration of the safety zone was necessary because on October 7, 1993, the U.S. Army Corps of Engineers advised Vessel Traffic Service New York, that the dredging project in the Kill Van Kull would not be completed as scheduled on December 1, 1993. As a result, Commanding Officer, Vessel Traffic Service New York, requested that a safety zone be in place until March 1, 1994.

This safety zone, effective December 7, 1993, reinstitutes the February 26, 1993 safety zone and imposes the same restrictions. This new safety zone, effective through March 1, 1994, is needed to continue protecting the users of this waterway and the immediate waterfront communities from the hazards associated with this ongoing project.

Background and Purpose

In August 1991, the Army Corps of Engineers (ACOE) and the Port Authority of New York and New Jersey commenced an extensive channel deepening project in the Kill Van Kull and Constable Hook area. The Coast Guard published a Regulated Navigation Area on April 7, 1992, to ensure the safety of vessels in the areas of blasting and dredging. On January 13, 1993, the ACOE notified the Coast Guard that they were prepared to begin operations in the area of Bergen Point West Reach (Phase V of the RNA) on March 8, 1993.

In May 1992, after publication of the RNA, the National Marine Research Center submitted a study to the U.S. Coast Guard COTP, New York. This study used the Marine Safety International's Computer Aided Operations Research Facility (MSI/CAORF) full-mission, real-time ship-handling simulator. During the study, New York Harbor pilots conned simulated vessels of various characteristics around the southern tip of Bergen Point, New Jersey, between Newark Bay and Bergen Point West Reach of the KVK. Currents, wind conditions, bank forces, tug assistance, vessel aerodynamics and hydrodynamics and other variables were represented. Representatives of the Port of New York, the Corps of Engineers and Coast Guard Vessel Traffic System (VTS) New York participated in the design of the tests and in formulating the conclusions and recommendations. The MSI/CAORF study revealed that vessels with a smaller length over all (LOA) could transit this area safely under the maximum credible adverse conditions. The study recommended that any operational restrictions take into account the LOA of vessels and the restrictions be placed on vessels under certain wind conditions. The Port Authority of New York and New Jersey gathered local pilots, vessel operators, and Coast Guard VTS New York to review the results of the MSI/CAORF study. This group reached a consensus that expanded upon the study recommendations, incorporating currents, winds, vessel size and local hands-on experience.

Based on the MSI/CAORF study, lessons learned from vessel groundings and collisions, and experience gained during the previous two years of the project, the Captain of the Port believes it is necessary to impose restrictions in the area of Bergen Point West Reach in addition to the requirements of the existing RNA. The area included within this safety zone is now regulated by regulations (1) through (7) of the RNA and the additional regulations implemented in this rulemaking. These safety zone regulations, in conjunction with the existing RNA regulations, are designed to allow vessels to transit safely and to protect the port and maritime community.

Regulatory Assessment

This regulation is not a significant regulatory action under Executive Order 12866 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). In light of the regulations limited scope, the small size of the affected area, the short duration, and the advance notice available to the community, the Coast Guard expects the economic impact of this rulemaking to be so minimal that a Regulatory Evaluation is unnecessary. The channel will not be completely closed therefor, allowing vessels to still make their destination with minor restrictions. Vessel operators who do not wish to comply with the safety zone restrictions in this area of the KVK have the option of choosing the south route by taking the Arthur Kill to or from Newark Bay.

Small Entities

Because it expects the impact of these regulations to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive order 12612, and it has been determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under

section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

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

Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

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

2. A new Section 165.T01–152 is added to read as follows:

§ 165.T01–152 Safety Zone: Kill Van Kull, Bergen Point West Reach—New York and New Jersey.

(a) *Location.* (1) The following area has been declared a Safety Zone: All waters of the Kill Van Kull Channel, bounded by the following points:

Latitude	*Longitude*
40°38′27″ N	074°08′32″ W
40°38′24″ N	074°08′52″ W
40°38′25″ N	074°09′03″ W
40°38′29″ N	074°09′14″ W
40°38′40″ N	074°09′07″ W
40°38′40″ N	074°08′53″ W
40°38′34″ N	074°08′44″ W
40°38′35″ N	074°08′32″ W
to buoy "G 13"	

thence to the point of the beginning.

(2) Within this safety zone exists a "Work Area" where concentrated drilling and blasting is being conducted. The "Work Area" includes all waters bounded by the following points:

Latitude	*Longitude*
40°38′27″ N	074°08′32″ W
40°38′24″ N	074°08′52″ W
40°38′31″ N	074°08′55″ W
40°38′29″ N	074°08′43″ W
40°38′31″ N	074°08′33″ W

thence to the point of the beginning.

The eastern and western edges of the "Work Area" are marked by lighted buoys set by the Coast Guard.

(b) *Effective date.* These regulations become effective at 8 a.m., December 7, 1993, and terminate at 8 a.m., March 1, 1994, unless terminated sooner by Captain of the Port, New York.

(c) *Regulations.* (1) "Work Area": In accordance with the general regulations in § 165.23 of this part, entry into or movement within the "Work Area" of the safety zone is prohibited unless authorized by the Captain of the Port.

(2) For all other waters of the safety zone described in paragraph (a)(1) the COTP has included the following requirements in addition to the RNA regulations in 33 CFR 165.165(d):

(i) Prior to entering this safety zone, the master, pilot, or operator of each vessel, 300 gross tons or greater and tugs with tows, shall notify Vessel Traffic Service (VTS) New York regarding the employment of assist vessels and intentions while transiting the safety zone.

(ii) *Tug requirements:* All vessels (including all tow configurations from stem to stern) over 350 feet in length require one assist vessel. All vessels over 700 feet require two assist vessels.

(iii) *Tidal current restrictions:* Vessels over 700 feet in length with a draft greater than 33 feet are restricted to movements within one hour either side of the slack water on ebb and flood tides while outbound.

(iv) *Astern tows:* Hawser tows are not permitted unless the tow is accompanied by an assist vessel.

(v) *Wind conditions:*

(A) In winds from 20 to 34 knots:

(*1*) Cargo ships may not transit through the safety zone.

(*2*) Tankers in ballast may not transit through the safety zone.

(*3*) Tugs with tank barge tows less than 350 feet (stem of tug to stern of barge) loaded or light, require an assist vessel.

(B) In wings greater than 34 knots, no vessels 300 gross tons or greater and all tugs with tows are prohibited from transiting the safety zone.

(3) *Waiver.* The Captain of the Port New York may, upon request, authorize a deviation from any regulation in this section if it is found that the proposed operations can be done safely. An application for deviation must be received not less than 4 hours before the intended operation(s) and must state the need and describe the proposal.

Dated: December 7, 1993.

L.L. Hereth,

Commander, U.S. Coast Guard, Acting Captain of the Port, New York.

[FR Doc. 93–31513 Filed 12–23–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50613A; FRL–4743–2]

Significant New Use Rule; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA issued a direct final rule published in the **Federal Register** of October 4, 1993. That document inadvertently omitted language for protection in the workplace requirements under 40 CFR 721.63 that would allow manufacturers, importers, and processors to use the new chemical exposure limits requirements as an alternative to specific respirator requirements in the significant new use rules (SNURs) for two chemical substances, and the numerical value of 1 ppm in the hazard communication program requirements under § 721.72 in the SNUR for one of the chemical substances. EPA intended to include these requirements as stated in the preamble of the direct final SNUR for these two substances. This action is necessary so that the SNURs are consistent with their corresponding TSCA section 5(e) consent orders. Because this is a nonsubstantive change, notice and public comment are not required.

DATES: This document is effective on December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404; TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: EPA is including language for protection in the workplace requirements under § 721.63 for 40 CFR 721.4250 and 721.5310, and the numerical value of 1 ppm in the hazard communication program requirements under § 721.72 for 40 CFR 721.5310. The requirements were inadvertently omitted in the direct final rule published in the **Federal Register** of October 4, 1993 (58 FR 51694).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: December 13, 1993.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625.

2. In § 721.4250(a)(2)(i) by adding a sentence at the end of the paragraph to read as follows:

§ 721.4250 Hexanoic acid, 2-ethyl-, ethenyl ester.

(a) * * *

(2) * * *

(i) * * * As an alternative to the respiratory requirements in this section, manufacturers, importers, and processors may use the New Chemical Exposure Limits provisions, including sampling and analytical methods which have previously been approved by EPA for this substance, found in the 5(e) consent order for this substance.

* * * * *

3. In § 721.5310(a)(2)(i) by adding a sentence at the end of the paragraph and by revising the last sentence in paragraph (a)(2)(ii) to read as follows:

721.5310 Neononanoic acid, ethenyl ester.

(a) * * *

(2) * * *

(i) * * * As an alternative to the respiratory requirements in this section, manufacturers, importers, and processors may use the New Chemical Exposure Limits provisions, including sampling and analytical methods which have previously been approved by EPA for this substance, found in the 5(e) consent order for this substance.

(ii) * * * When using this substance, use respiratory protection, unless workplace airborne concentrations are maintained at or below an 8–h TWA of 1 ppm.)

* * * * *

[FR Doc. 93–31468 Filed 12–23–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Parts 712 and 716

[OPPTS–82041; FRL–4644–1]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Interagency Testing Committee (ITC) in its 31st Report to EPA revised the Toxic Substances Control Act (TSCA) section 4(e) Priority List by designating for testing 24 chemical substances and recommending two revised chemical categories from the 28th ITC report. There are no recommended with intent-to-designate chemicals. The ITC recommendations must be given priority consideration by EPA in promulgating test rules. EPA is adding the 24 chemical substances and two categories of chemical substances to two model information-gathering rules: The Toxic Substances Control Act (TSCA) Section 8(a) Preliminary Assessment Information Rule (PAIR) and the TSCA Section 8(d) Health and Safety Data Reporting Rule. These model rules will require manufacturers, importers, and processors of the specific substances and members of the categories to report production, use, exposure-related and unpublished health and safety data to EPA. Also, this rule amends a previous addition to the PAIR and 8(d) rule made in response to the ITC's addition of white phosphorus to the Testing Priority List (TPL) in their 29th Report. For white phosphorus, CAS No. 12185–10–3 will be added to both rules as an identifier.

DATES: This rule will become effective on January 26, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. E–543, Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This rule adds 24 chemical substances and two categories of substances to both the PAIR and the section 8(d) Health and Safety Data Reporting Rule. Manufacturers, processors, and importers of these chemicals will be required to report unpublished health and safety data and/or end use, exposure, and production volume data to EPA. Because the ITC has expressed no need for ecological effects information for the 24 substances being added to the section 8(d) rule under the category designated "OSHA Chemicals in Need of Dermal Absorption Testing," EPA is exempting from ecological effects data reporting these substances under the section 8(d) rule.

I. Background

Section 4(e) of TSCA established the ITC and authorized it to recommend to EPA chemical substances and mixtures (chemicals) to be given priority consideration in proposing test rules under section 4. For some of these chemicals, the ITC may designate that EPA must respond to its recommendations within 12 months. In this time, EPA must either initiate a rulemaking to test the chemical or publish in the **Federal Register** its reasons for not doing so.

On January 28, 1993, EPA announced the receipt of the 31st Report from the ITC. It was then published by EPA on May 5, 1993 (58 FR 26898). The 31st Report revises the Committee's priority list of chemicals by designating 24 chemical substances and recommending two categories to the section 4(e) priority list (for a total of 37 chemical substances). For the chemicals listed under § 716.120(d) of the section 8(d) rule and falling within the category "OSHA Chemicals in Need of Dermal Absorption Testing" the reporting of ecological effects data will not be required. Because no member of the ITC has expressed a need for this data, the ITC feels there is no need to collect this information at this time. This rule adds 24 chemical substances and two categories of substances to both the PAIR and the section 8(d) Health and Safety Data Reporting Rule. These two rules are model information gathering rules which assist EPA in responding to the ITC recommendations.

EPA issued the PAIR under section 8(a) of TSCA (15 U.S.C. 2607(a)), and it is codified at 40 CFR part 712. This model section 8(a) rule establishes standard reporting requirements for manufacturers and importers of the chemicals listed in the rule at 40 CFR 712.30. These manufacturers and importers are required to submit a one-time report on general volume, end use, and exposure-related information using the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710–35). EPA uses this model section 8(a) rule to gather current information on chemicals of concern quickly.

EPA issued the model Health and Safety Data Reporting Rule under section 8(d) of TSCA (15 U.S.C. 2607(d)), and it is codified at 40 CFR part 716. The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemicals to submit to EPA copies and lists of unpublished health and safety studies on the listed chemicals that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decision making under TSCA sections 4, 5, 6, 8, and 9. These model rules provide for the automatic addition of ITC priority list chemicals. Whenever

EPA announces the receipt of an ITC report, EPA may, at the same time without further notice and comment, amend the two model information-gathering rules by adding the recommended chemicals. The amendment adding these chemicals to the PAIR and the Health and Safety Data Reporting Rule becomes effective 30 days after publication.

II. Chemicals To Be Added

In its 31st Report to EPA, the ITC designated 24 chemical substances and recommended for priority consideration two categories of substances; there are no recommended with intent-to-designate chemicals. The 24 chemical substances are of regulatory interest to the Occupational Safety and Health Administration (OSHA) because of a lack of dermal absorption test data. These chemicals, listed in the category "OSHA Chemicals in Need of Dermal Absorption Testing," will be exempt from reporting ecological effects data under section 8(d). The two categories are propylene glycol ethers and esters and methyl ethylene glycol ethers and esters. These two categories were previously recommended in the 28th ITC Report (56 FR 41212, August 19, 1991) based on concerns raised by the National Institute of Occupational Safety and Health (NIOSH) with glycol ethers and esters that are metabolized in humans to known reproductive toxicants. The two categories were subsequently revised to reflect comments by ITC member agencies that not all of these chemicals are of concern as to their possible metabolism to known reproductive toxicants, and to reflect interest in learning about types and quantities of certain of these chemical substances that are likely to be used in consumer products, and possible exposures that may result from their consumer use. For a complete listing of the substances, see the regulatory text section of this document or the ITC's 31st Report published in the **Federal Register** of May 5, 1993 (58 FR 26898).

Additionally, in the 29th ITC report (56 FR 67424), the chemical substance white phosphorus (CAS No. 7723–14–0) was recommended for priority consideration. The ITC subsequently determined that another CAS number identifier (12185–10–3) also represented white phosphorus. To ensure that the ITC member agencies have adequate information so that reasoned testing decisions may be made, white phosphorus (CAS No. 12185–10–3) will be placed on both the PAIR and the section 8(d) rules.

III. Reporting Requirements

A. Preliminary Assessment Information Rule

All persons who manufactured or imported the chemical substances named in this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710–35) for each manufacturing or importing site at which they manufactured or imported a named substance. A separate form must be completed for each substance and submitted to the Agency no later than March 28, 1994. Persons who have previously and voluntarily submitted a Manufacturer's Report to the ITC or EPA may be able to submit a copy of the original Report to EPA or to notify EPA by letter of their desire to have this voluntary submission accepted in lieu of a current data submission. See § 712.30(a)(3).

Details of the reporting requirements, the basis for exemptions, and a facsimile of the reporting form, are provided in 40 CFR part 712. Copies of the form are available from the TSCA Environmental Assistance Division at the address listed under **FOR FURTHER INFORMATION CONTACT.**

B. Health and Safety Data Reporting Rule

Listed below are the general reporting requirements of the section 8(d) model rule.

1. Persons who, in the 10 years preceding the date a substance is listed, either have proposed to manufacture, import, or process, or have manufactured, imported, or processed the listed substance must submit to EPA: A copy of each health and safety study which is in their possession at the time the substance is listed.

2. Persons who, at the time the substance is listed, propose to manufacture, import, or process, or are manufacturing, importing, or processing the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time the substance is listed.

b. A list of health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time the substance is listed and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the date the substance is listed and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

3. Persons who, after the time the substance is listed, propose to manufacture, import, or process the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of the completion date.

The bulk of reporting is required at the time the substance is listed. Persons described in categories 1 and 2 do all or most of their health and safety data reporting at the start of the reporting period. The remaining reporting requirements, specifically categories 2(d), 2(e), and 3, continue prospectively.

Detailed guidance for reporting unpublished health and safety data is provided in the **Federal Register** of September 15, 1986 (51 FR 32720). Also found there are explanations of the reporting exemptions.

C. Submission of PAIR Reports and Section 8(d) Studies

PAIR reports and section 8(d) health and safety studies must be sent to: TSCA Document Processing Center (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: (insert either PAIR or 8(d) Reporting).

D. Removal of Chemical Substances from the Rules

Any person who believes that section 8(a) or 8(d) reporting required by this rule is unwarranted, should promptly submit to EPA in detail the reasons for that belief. EPA, in its discretion, may remove the substance from this rule for good cause (40 CFR 712.30 and 716.105). When withdrawing a

substance from the rule, EPA will issue a rule amendment for publication in the **Federal Register.**

IV. Release of Aggregate Data

EPA will follow procedures for the release of aggregate statistics as prescribed in the **Federal Register** notice of June 13, 1983 (48 FR 27041). Included in the notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be received by EPA no later than March 28, 1994.

V. Economic Analysis

A. Preliminary Assessment Information Rule

EPA estimates the PAIR reporting cost of this rule is $375,570. To calculate this figure, EPA used information from a variety of published sources as well as information from OPPTS's Risk Management 1 (RM1) reports on similar chemicals to generate a list of 156 firms that manufacture and/or import the 38 chemicals at a total of 234 sites. The published sources used include: SRI International's *Directory of Chemical Producers, Chemical Economics Handbook*, and *Specialty Chemicals*; other multiclient studies; the U.S. International Trade Commission's *Synthetic Organic Chemicals*; and company product literature. An unknown number of the businesses affected by the addition of the chemicals to the Priority List may quality as a small business as defined in 40 CFR 712.25(c). However, for this analysis it is assumed that all firms identified will report. Therefore, EPA expects 156 firms to generate a total of 234 reports (some sites produce more than one of the 38 chemicals).

Reporting costs (dollars)	
(a) 234 reports estimated at $843 per report	$197,262
(b) 234 sites at $762 per site	$178,308
Total cost	$375,570
Mean cost per site: $375,350/234 sites	$1,605
Mean cost per firm: $375,350/156 firms	$2,407
Reporting burden (hours)	
(a) Rule familiarization: 18 h/site X 234 sites	4,212 h
(b) Reporting: 16 h/report X 234 reports	3,744 h
Total burden hours	7,956 h
Average burden per site at 7,956 h/234 sites	34 h
Average burden per firm at 7,956 h/156 firms	51 h
EPA costs (dollars):	
Processing cost = 234 reports at $95/report	$22,230

B. Health and Safety Data Reporting Rule

EPA estimates the total reporting costs for establishing section 8(d) reporting requirements for 38 chemicals will be $163,906. This cost estimate is high because the Agency is uncertain about the likely number of respondents to the rule. Although EPA has used the best available data to make its economic projections, much of the information is based upon the 1986 TSCA Inventory Update and secondary information from industry sources. Therefore, EPA tends to overestimate rather than underestimate reporting burden. The estimated reporting costs are broken down as follows:

Initial corporate review	$ 48,635
Site identification	17,926
File searches at site	36,856
Photocopying existing studies	6,218
Title listing	1,868
Managerial review for CBI	36,216
Reporting on newly-initiated studies	784
Submission of newly-initiated studies	1,400
Submissions after initial reporting period	14,003
Total	$163,906
Reporting burden (hours)	
Initial review: 2 h/firm X 468 firms	936 h
(b) Reporting: 6.2 h/firm X 468 firms	2,902 h
Total reporting burden hours	3,838 h

VI. Rulemaking Record

The following documents constitute the record for this rule (docket control number OPPTS–82041). A public version of the record, without any CBI, is available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, from 12 noon to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. E–G102, 401 M St., SW., Washington, DC 20460.

1. This final rule.
2. The economic analysis for this rule.
3. The 31st Report of the ITC.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This rule is not major because it will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or any of the adverse effects described in the Executive Order.

This amendment was not submitted to the Office of Management and Budget (OMB) for review, because the automatic listing of substances recommended by the ITC is provided for in 40 CFR 712.30(c) and 716.105(b).

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control numbers 2070–0054 for PAIR reporting and 2070–0004 for TSCA section 8(d) reporting.

Public reporting burden for this collection of information is estimated to average 34 hours for PAIR per response and 8.2 hours for section 8(d), 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, (2131), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Parts 712 and 716

Environmental protection, Chemicals, Hazardous substances, Health and safety data, Recordkeeping and reporting requirements.

Dated: November 16, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR Chapter I is amended as follows:

PART 712—[AMENDED]

1. In part 712:

a. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 712.30 is amended by adding in CAS number sequence one substance to the list in paragraph (w) and adding three categories alphabetically in paragraph (x) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(w) * * *

CAS No.	Substance	Effective date	Reporting date
	* * * * * * *		
12185–10–3	White phosphorus	1/26/94	3/28/94
	* * * * * * *		

(x) * * *

CAS No.	Substance	Effective date	Reporting date
	* * * * * * *		
Methyl ethylene glycol ethers and esters:			
3121-61-7	Ethylene glycol monomethyl ether acrylate	1/26/94	3/28/94
23783-42-8	Tetraethylene glycol monomethyl ether	1/26/94	3/28/94
OSHA Chemicals in Need of Dermal Absorption Testing:			
60–29–7	Ethyl ether	1/26/94	3/28/94
75–65–0	*tert*-Butyl alcohol	1/26/94	3/28/94
76–22–2	Camphor	1/26/94	3/28/94
78–92–2	*sec*-Butyl alcohol	1/26/94	3/28/94
79–20–9	Methyl acetate	1/26/94	3/28/94
97–77–8	Disulfiram	1/26/94	3/28/94
100–25–4	*p*-Dinitrobenzene	1/26/94	3/28/94
105–46–4	*sec*-Butyl acetate	1/26/94	3/28/94
106–42–3	*p*-Xylene	1/26/94	3/28/94
107–31–3	Methyl formate	1/26/94	3/28/94

CAS No.	Substance	Effective date	Reporting date
107–66–4	Dibutyl phosphate	1/26/94	3/28/94
108–03–2	1-Nitropropane	1/26/94	3/28/94
108–87–2	Methylcyclohexane	1/26/94	3/28/94
109–66–0	Pentane	1/26/94	3/28/94
110–83–8	Cyclohexene	1/26/94	3/28/94
111–84–2	Nonane	1/26/94	3/28/94
123–92–2	Isoamyl acetate	1/26/94	3/28/94
142–82–5	Heptane (*n*-Heptane)	1/26/94	3/28/94
287–92–3	Cyclopentane	1/26/94	3/28/94
532–27–4	*a*-Chloroacetophenone	1/26/94	3/28/94
540–88–5	*tert*-Butyl acetate	1/26/94	3/28/94
628–63–7	*n*-Amyl acetate	1/26/94	3/28/94
7631–90–5	Sodium bisulfite	1/26/94	3/28/94
7681–57–4	Sodium metabisulfite	1/26/94	3/28/94
Propylene glycol ethers and esters:			
108–65–6	Propylene glycol monomethyl ether acetate	1/26/94	3/28/94
110–98–5	Dipropylene glycol	1/26/94	3/28/94
770–35–4	1–Phenoxy-2-propanol	1/26/94	3/28/94
20324–32–7	1–(2-Methoxy-1-methylethoxy)-2-propanol	1/26/94	3/28/94
20324–33–8	Tripropylene glycol methyl ether	1/26/94	3/28/94
28677–93–2	Methoxy-1-propanol	1/26/94	3/28/94
29387–86–8	Propylene glycol monobutyl ether	1/26/94	3/28/94
29911–28–2	Dipropylene glycol butyl ether	1/26/94	3/28/94
42978–66–5	Tripropylene glycol diacrylate	1/26/94	3/28/94
57018–52–7	Propylene glycol mono-*tert*-butyl ether	1/26/94	3/28/94
88917–22–0	Dipropylene glycol monomethyl ether acetate	1/26/94	3/28/94
	* * * * * * *		

PART 716–[AMENDED]

2. In part 716:

a. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

b. Section 716.20 is amended by adding paragraph (b)(3) to read as follows:

§ 716.20 Studies not subject to the reporting requirements.

* * * * *

(b) * * *

(3) For the listed chemicals under § 716.120(d) in the category "OSHA Chemicals in Need of Dermal Absorption Testing," studies on ecological effects.

c. Section 716.120 is amended by adding, in CAS number sequence, one substance to the list in paragraph (a), and adding three categories alphabetically to paragraph (d) to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(a) * * *

CAS No.	Substance	Special exemptions	Effective date	Sunset date
	* * * * * * *	*		
12185–10–3	White phosphorus		1/26/94	1/26/04
	* * * * * * *	*		

(d) * * *

Category	CAS No.	Special exemptions	Effective date	Sunset date
* * *	* * *	*		
Methyl ethylene glycol ethers and esters:				
Ethylene glycol monomethy ether acrylate	3121–61–7	.....	1/26/94	1/26/04
Tetraethylene glycol monomethyl ether	23783–42–8	.....	1/26/94	1/26/04

Category	CAS No.	Special exemptions	Effective date	Sunset date
OSHA Chemicals in Need of Dermal Absorption Testing:				
n-Amyl acetate	628–63–7	§ 716.20(b)(3) applies.	1/26/94	1/26/04
sec-Butyl acetate	105–46–4	§ 716.20(b)(3) applies.	1/26/94	1/26/04
tert-Butyl acetate	540–88–5	§ 716.20(b)(3) applies.	1/26/94	1/26/04
sec-Butyl alcohol	78–92–2	§ 716.20(b)(3) applies.	1/26/94	1/26/04
tert-Butyl alcohol	75–65–0	§ 716.20(b)(3) applies.	1/26/94	1/26/04
Camphor	76–22–2	§ 716.20(b)(3) applies.	1/26/94	1/26/04
a-Chloroacetophenone	532–27–4	§ 716.20(b)(3) applies.	1/26/94	1/26/04
Cyclohexene	110–83–8	§ 716.20(b)(3) applies.	1/26/94	1/26/04
Cyclopentane	287–92–3	§ 716.20(b)(3) applies.	1/26/94	1/26/04
Dibutyl phosphate	107–66–4	§ 716.20(b)(3) applies.	1/26/94	1/26/04
p-Dinitrobenzene	100–25–4	§ 716.20(b)(3) applies.	1/26/94	1/26/04
Disulfiram	97–77–8	§ 716.20(b)(3) applies.	1/26/94	1/26/94
Ethyl ether	60–29–7	§ 716.20(b)(3) applies.	1/26/94	1/26/04
Heptane (*n*-Heptane)	142–82–5	§ 716.20(b)(3) applies.	1/26/94	1/26/04
Isoamyl acetate	123–92–2	§ 716.20(b)(3) applies.	1/26/94	1/26/04
Methyl acetate	79–20–9	§ 716.20(b)(3) applies.	1/26/94	1/26/04
Methylcyclohexane	108–87–2	§ 716.20(b)(3) applies.	1/26/94	1/26/04
Methyl formate	107–31–3	§ 716.20(b)(3) applies.	1/26/94	1/26/04
1-Nitropropane	108–03–2	§ 716.20(b)(3) applies.	1/26/94	1/26/04
Nonane	111–84–2	§ 716.20(b)(3) applies.	1/26/94	1/26/04
Pentane	109–66–0	§ 716.20(b)(3) applies.	1/26/94	1/26/04
Sodium bisulfite	7631–90–5	§ 716.20(b)(3) applies.	1/26/94	1/26/04
Sodium metabisulfite	7681–57–4	§ 716.20(b)(3) applies.	1/26/94	1/26/04
p-Xylene	106–42–3	§ 716.20(b)(3) applies.	1/26/94	1/26/04
Propylene glycol ethers and esters:				
Dipropylene glycol	110–98–5	.....	1/26/94	1/26/04
Dipropylene glycol butyl ether	29911–28–2	.....	1/26/94	1/26/04
Dipropylene glycol monomethyl ether acetate	88917–22–0	.....	1/26/94	1/26/04
1-(2-Methoxy-1-methylethoxy)-2-propanol	20324–32–7	.....	1/26/94	1/26/04
Methoxy-1-propanol	28677–93–2	.....	1/26/94	1/26/04
1-Phenoxy-2-propanol	770–35–4	.....	1/26/94	1/26/04
Propylene glycol monobutyl ether	29387–86–8	.....	1/26/94	1/26/04
Propylene glycol monomethyl ether acetate	108–65–6	.....	1/26/94	1/26/04
Propylene glycol mono-*tert*-butyl ether	57018–52–7	.....	1/26/94	1/26/04
Tripropylene glycol diacrylate	42978–66–5	.....	1/26/94	1/26/04
Tripropylene glycol methyl ether	20324–33–8	.....	1/26/94	1/26/04
. . .	. . .	.		

[FR Doc. 93–31268 Filed 12–23–93; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Parts 712 and 716

[OPPTS–82037; FRL–4008–4]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: The Interagency Testing Committee, in its 28th Report to EPA, revised the Toxic Substances Control Act (TSCA) Section 4(e) Testing Priority List (TPL) by designating for testing 6 substances, and recommending for testing 3 substances and 11 categories of chemical substances. Subsequently, for reasons stated in its 31st and 32nd Reports to EPA (issued in January and April of 1993, respectively), the ITC amended the set of substances and chemical groups added to the TPL via the 28th Report, leaving as 28th List additions two chemical substances (thiophenol and acetone) and one chemical category (cyanoacrylates). In support of ITC activities and/or EPA follow-up in response to the ITC additions, EPA generally collects data on ITC listed substances via two model information gathering rules: The TSCA section 8(a) Preliminary Assessment Information Rule (PAIR) and the TSCA section 8(d) Health and Safety Data Reporting Rule. Because of commitments by industry to develop certain data on acetone, EPA is at this time adding only thiophenol (CAS No. 108–95–5) and certain members of the chemical category cyanoacrylates to these two model information gathering rules. Additionally, EPA is adding ethylene bis(5,6-dibromonorbornane-2,3-dicarboximide) (CAS No. 52907–07–0) to the PAIR and section 8(d) rule. This chemical substance, added to the TPL via the 25th ITC Report, was previously added to the PAIR and section 8(d) rule under CAS No. 41291–34–5. The CAS number 52907–07–0 has replaced CAS number 41291–34–3 on the TSCA Inventory of Chemical Substances. This action requires manufacturers, importers, and processors of the specific substances and chemical categories members to report unpublished health and safety data, and manufacturers and importers to report production, use and exposure-related data to EPA. Finally, this rule makes certain technical corrections to previous chemical substance listings under the PAIR and section 8(d) rules.

DATES: This rule will become effective on January 26, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm. E–543, Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This rule adds two chemical substances and one category of substances to the PAIR and to the section 8(d) Health and Safety Data Reporting Rule. Manufacturers, processors, and importers of these chemicals will be required to report unpublished health and safety data, and manufacturers and importers will be required to report end use, exposure, and production volume data to EPA.

This rule also corrects four typographical errors in final section 8(a) and/or 8(d) rules published in the **Federal Registers** of June 5, 1990 (55 FR 23052), and August 29, 1991 (56 FR 42692). In 55 FR 23052, the CAS number for 2-propenoic acid, (1-methylethylidene)bis(2,6-dibromo-4,1-phenylene) ester was incorrectly listed as 55205–38–7 in §§ 712.30(x) and 716.120(d); it should read 55205–38–4. In 56 FR 42692, the CAS number for benzeneacetaldehyde, 4-methyl- was incorrectly listed as 99–72–9 in §§ 712.30(x) and 716.120(d); it should read 104–09–6; ethanol, 2-(2-ethoxyethoxy)-, acetate (CAS No. 112–15–2) was incorrectly listed as carbinol acetate in §§ 712.30(x) and 716.120(d); and 3-sulfolene (CAS No. 77–79–2) was incorrectly listed as sulfolene in §§ 712.30(x) and 716.120(d).

I. Background

Section 4(e) of TSCA established the ITC and authorized it to recommend to EPA chemical substances and mixtures (chemicals) to be given priority consideration in proposing test rules under section 4. For some of these chemicals, the ITC may designate that EPA must respond to its recommendations within 12 months. In this time, EPA must either initiate a rulemaking to test the chemical or publish in the **Federal Register** its reasons for not doing so.

On June 6, 1991, EPA announced the receipt of the 28th Report from the ITC. It was then published by EPA on August 19, 1991 (56 FR 41212). The 28th ITC Report was later revised by the ITC via their 31st Report (received by EPA January 28, 1993, published in the **Federal Register** May 5, 1993 (58 FR 26898)) and their 32nd Report (received by EPA June 2, 1993, published in the **Federal Register** July 16, 1993 (58 FR 38490)). In their 31st Report, the ITC revised two chemical groups added to the TPL in their 28th Report. These revised chemical groups, propylene glycol ethers and esters and methyl ethylene glycol ethers and esters, are now being considered by the ITC as added to the TPL in their 31st Report. EPA has issued section 8 rules on chemicals included in the 31st ITC Report in a notice published elsewhere in today's issue of the **Federal Register**.

In their 32nd Report, the ITC removed from the TPL four chemicals added in the 28th Report because certain members of the chemical industry have committed to develop dossiers and necessary test data under the Screening Information Data Set (SIDS) program of the Organization for Economic Cooperation and Development (OECD). The SIDS program is a consensus testing regimen developed for screening high production chemicals and is accepted by all OECD member nations. The four chemicals are: *n*-Butanol (CAS No. 71–36–3), isobutanol (CAS No. 78–83–1), dimethyl terephthalate (CAS No. 120–61–6), and di(2-ethylhexyl)adipate (CAS No. 103–23–1). Because of the ITC's removal of these substances from the TPL, and because of commitments by industry to develop data on acetone, EPA is adding only thiophenol to the PAIR and section 8(d) rules from the group of substances originally added to the TPL via the 28th Report of the ITC.

Additionally, the 32nd ITC Report acted to amend the 28th ITC Report by removing two chemicals and eight chemical categories. In summary, these substances and categories were removed because of competing priorities within the ITC; however, the ITC plans to continue evaluating them on a chemical-by-chemical basis to assess possible concerns of ITC-member agencies, and may be included in later reports of the ITC. The two chemicals are allyl alcohol (CAS No. 107–18–6) and 2,4-dichlorophenol (CAS No. 120–83–2); the eight chemical categories are: Alkynes, nitroalcohols, phosphoniums, hydrazines, oxiranes, alkoxysilanes, aldehyde hydrates, and isothiocyanates. As a result of their removal from the TPL, EPA is not at this time collecting section 8 data for these substances.

Finally, this rule adds to the section 8(a) and section 8(d) rules an additional CAS number to a previously listed substance. The 25th ITC Report PAIR and section 8(d) rule published in the **Federal Register** of December 12, 1989 (54 FR 51131), included the chemical substance ethylene bis(5,6-dibromonorbornane-2,3-dicarboximide),

under CAS No. 41291–34–3. Since that time, the CAS number for that substance has been revised and is now 52907–07–0. Because the ITC requires section 8(a) and section 8(d) information concerning this substance under the revised CAS number, ethylene bis(5,6-dibromonorbornane-2,3-dicarboximide) under CAS No. 52907–07–0 is being added to both the section 8(a) and the section 8(d) rules.

EPA issued the PAIR under section 8(a) of TSCA (15 U.S.C. 2607(a)), and it is codified at 40 CFR part 712. This model section 8(a) rule establishes standard reporting requirements for manufacturers and importers of the chemicals listed in the rule at 40 CFR 712.30. These manufacturers and importers are required to submit a one-time report on general volume, end use, and exposure-related information using the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710–35). EPA uses this model section 8(a) rule to gather current information on chemicals of concern quickly. This information may be used in chemical risk screening and/or assessment, and to make findings needed to support regulation, if appropriate.

EPA issued the model Health and Safety Data Reporting Rule under section 8(d) of TSCA (15 U.S.C. 2607(d)), and it is codified at 40 CFR part 716. The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemicals to submit to EPA copies and lists of unpublished health and safety studies on the listed chemicals that they manufacture, import, or process. These studies provide information needed to assess chemical risk and have provided significant support for decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

These model rules provide for the automatic addition of ITC priority list chemicals. Whenever EPA announces the receipt of an ITC report, EPA may, without further notice and comment, amend the two model information-gathering rules by adding the recommended chemicals. The amendment adding these chemicals to the PAIR and the Health and Safety Data Reporting Rule becomes effective 30 days after publication in the **Federal Register**.

II. Chemicals To Be Added

This rule adds to the PAIR and the Health and Safety Data Reporting Rule two chemical substances and one category of substances. The two chemical substances are thiophenol (CAS No. 108–98–5) and ethylene bis(5,6-dibromonorbornane-2,3-dicarboximide) (CAS No. 52907–07–0), and the one category is cyanoacrylates. Regarding the cyanoacrylates, reporting will be required only on the following substances:

CAS No.	Chemical Name
137–05–3	2-Propenoic acid, 2-cyano-, methyl ester
1069–55–2.	2-Propenoic acid, 2-cyano-, isobutyl ester
6197–30–4.	2-Propenoic acid, 2-cyano-3,3-diphenyl-, 2-ethylhexyl ester
6606–65–1.	2-Propenoic acid, 2-cyano-, butyl ester
7085–85–0.	2-Propenoic acid, 2-cyano-, ethyl ester
7324–02–9.	2-Propenoic acid, 2-cyano-, 2-propenyl ester
10586–17–1.	2-Propenoic acid, 2-cyano-, 1-methylethyl ester
21982–43–4.	2-Propenoic acid, 2-cyano-, ethoxy ethyl ester
23023–91–8.	2-Propenoic acid, 2-cyano-, 2,2,2-trifluoro-1-methylethyl ester
27816–23–5.	2-Propenoic acid, 2-cyano-, 2-methoxyethyl ester
64992–16–1.	Ethanaminium, 2-[[2-cyano-3-[4-(diethylamino)phenyl]-1-oxo-2-propenyl]oxy]- *N,N,N*-trimethyl-, chloride

III. Reporting Requirements

A. Preliminary Assessment Information Rule

All persons who manufactured or imported the chemical substances named in this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710–35) for each manufacturing or importing site at which they manufactured or imported a named substance. A separate form must be completed for each substance and submitted to the Agency no later than March 28, 1994. Persons who have previously and voluntarily submitted a Manufacturer's Report to the ITC or EPA may be able to submit a copy of the original report to EPA or to notify EPA by letter of their desire to have this voluntary submission accepted in lieu of a current data submission. See § 712.30(a)(3).

Details of the reporting requirements, the basis for exemptions, and a facsimile of the reporting form, are provided in 40 CFR part 712. Copies of the form are available from the TSCA Environmental Assistance Division at the address listed under **FOR FURTHER INFORMATION CONTACT**.

B. Health and Safety Data Reporting Rule

Listed below are the general reporting requirements of the section 8(d) model rule.

1. Persons who, in the 10 years preceding the date a substance is listed, either have proposed to manufacture, import, or process, or have manufactured, imported, or processed, the listed substance must submit to EPA: A copy of each health and safety study which is in their possession at the time the substance is listed.

2. Persons who, at the time the substance is listed, propose to manufacture, import, or process, or are manufacturing, importing, or processing the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time the substance is listed.

b. A list of health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time the substance is listed and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the date the substance is listed and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

3. Persons who, after the time the substance is listed, propose to manufacture, import, or process the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of the completion date.

The bulk of reporting is required at the time the substance is listed. Persons described in categories 1 and 2 do all or most of their health and safety data reporting at the start of the reporting period. The remaining reporting requirements, specifically categories 2(d), 2(e), and 3, continue prospectively.

Detailed guidance for reporting unpublished health and safety data is provided in the **Federal Register** of September 15, 1986 (51 FR 32720). Also found there are the reporting exemptions.

C. Submission of PAIR Reports and Section 8(d) Studies

PAIR reports and section 8(d) health and safety studies must be sent to: TSCA Document Processing Center (7407), Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: (insert either PAIR or 8(d) Reporting).

D. Removal of Chemical Substances from the Rules

Any person who believes that section 8(a) or 8(d) reporting required by this rule is unwarranted, should promptly submit to EPA in detail the reasons for that belief. EPA, in its discretion, may remove the substance from this rule for good cause (§ § 712.30 and 716.105). When withdrawing a substance from the rule, EPA will issue a rule amendment for publication in the **Federal Register**.

IV. Release of Aggregate Data

EPA will follow procedures for the release of aggregate statistics as prescribed in the **Federal Register** notice of June 13, 1983 (48 FR 27041). Included in the notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be received by EPA no later than March 28, 1994.

V. Economic Analysis

A. Preliminary Assessment Information Rule

EPA estimates the PAIR reporting cost of this rule is $57,780. To calculate this figure, EPA used information from the 1986 *TSCA Inventory Update* and SRI International's *Directory of Chemical Producers* to generate a list of 24 firms that manufacture and/or import the 13 chemicals at a total of 36 sites. None of the companies identified qualify as a small business as defined in 40 CFR 712.24(c), thus, EPA expects 24 firms to generate a total of 36 reports.

Reporting costs (dollars)	
(a) 36 reports estimated at $843 per report	$30,348
(b) 36 sites at $762 per site	$27,432
Total cost	$57,780
Mean cost per site: $60,990/36 sites	$1,695
Mean cost per firm: $60,990/24 firms	$2,542
Reporting burden (hours)	
(a) Rule familiarization: 18 h/site X 36 sites	648 h
(b) Reporting: 16 h/report X 36 reports	576 h
Total burden hours	1,224 h
Average burden per site at 34 h/36 sites	0.95 h
Average burden per firm at 52 h/24 firms	2.17h
EPA costs (dollars):	
Processing cost = 36 reports at $95/report	$3,420

B. Health and Safety Data Reporting Rule

EPA estimates the total reporting costs for establishing section 8(d) reporting requirements for 13 chemicals will be $46,751. This cost estimate is high because the Agency is uncertain about the likely number of respondents to the rule. Although EPA has used the best available data to make its economic projections, much of the information is based upon the 1986 TSCA Inventory Update and secondary information from industry sources. Therefore, EPA tends to overestimate rather than underestimate reporting burden. The estimated reporting costs are broken down as follows:

Initial corporate review	$ 7,482
Site identification	6,079
File searches at site	12,499
Photocopying existing studies	2,132
Title listing	633
Managerial review for CBI	128
Reporting on newly-initiated studies	273
Submissions after initial reporting period	4,748
Total	$46,264
Reporting burden (hours)	
Initial review: 2 h/firm × 72 firms	144 h

(b) Reporting: 13.93 h/firm × 72 firms	1,003 h
Total reporting burden hours	1,147 h

VI. Rulemaking Record

The following documents constitute the record for this rule (docket control number OPPTS–82037). A public version of the record, without any CBI, is available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. E–G102, 401 M St., SW., Washington, DC 20460.

1. This final rule.
2. The economic analysis for this rule.
3. The 28th Report of the ITC.
4. The 31st Report of the ITC.
5. The 32nd Report of the ITC.

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e. Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health and safety, or State, local or tribal governments or communities (also known as, "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control numbers 2070–0054 for PAIR reporting and 2070–0004 for TSCA section 8(d) reporting.

Public reporting burden for this collection of information is estimated to average 34 hours for PAIR per response and 28 hours for section 8(d), 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, (2131), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Parts 712 and 716

Environmental protection, Chemicals, Hazardous substances, Health and safety data, Recordkeeping and reporting requirements.

Dated: December 10, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics

Therefore, 40 CFR Chapter I is amended as follows:

Part 712—[AMENDED]

1. In Part 712:

a. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 712.30 is amended by adding two substances in ascending CAS number order in paragraph (w), and in paragraph (x) by revising the entry for CAS No. 99–72–9 to read "104–09–6" under the "Aldehydes" category, revising the entry for CAS No. 55205–38–7 to read "55205–38–4" under the "Brominated flame retardants" category, revising the entry for CAS No. 112–15–2 under the "Substantially produced chemicals in need of subchronic tests" category, revising the entry for CAS No. 77–79–2 under the "Sulphones" category, and alphabetically adding one category to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(w) * * *

CAS No.	Substance	Effective date	Reporting date
	* * * * * * *		
108–95–5	Thiophenol	1/26/94	3/28/94
	* * * * * * *		
52907–07–0	Ethylene bis(5,6-dibromonorbornane-2,3-dicarboximide)	1/26/94	3/28/94
	* * * * * * *		

(x) * * *

CAS No.	Substance	Effective date	Reporting date
	* * * * * * *		
Aldehydes:			
104–09–6	Benzeneacetaldehyde, 4-methyl-	9/30/91	11/27/91
	* * * * * * *		
Brominated flame retardants:			
55205–38–4	2-Propenoic acid, (1-methylethylidene)bis(2,6-dibromo-4,1-phenylene) ester	10/29/90	12/27/90
	* * * * * * *		
Cyanoacrylates:			
137–05–3	2-Propenoic acid, 2-cyano-, methyl ester	1/26/94	3/28/94
1069–55–2	2-Propenoic acid, 2-cyano-, isobutyl ester	1/26/94	3/28/94
6197–30–4	2-Propenoic acid, 2-cyano-3,3-diphenyl-, 2-ethylhexyl ester	1/26/94	3/28/94
6606–65–1	2-Propenoic acid, 2-cyano-, butyl ester	1/26/94	3/28/94
7085–85–0	2-Propenoic acid, 2-cyano-, ethyl ester	1/26/94	3/28/94
7324–02–9	2-Propenoic acid, 2-cyano-, 2-propenyl ester	1/26/94	3/28/94
10586–17–1	2-Propenoic acid, 2-cyano-, 1-methylethyl ester	1/26/94	3/28/94
21982–43–4	2-Propenoic acid, 2-cyano-, ethoxyethyl ester	1/26/94	3/28/94
23023–91–8	2-Propenoic acid, 2-cyano-, 2,2,2-trifluoromethyl ester	1/26/94	3/28/94
27816–23–5	2-Propenoic acid, 2-cyano-, 2-methoxyethyl ester	1/26/94	3/28/94
64992–16–1	Ethanaminium, 2-[[2-cyano-3-[4-(diethylamino)phenyl]-1-oxo-2-propenyl]oxy]-*N,N,N*-trimethyl-, chloride.	1/26/94	3/28/94
	* * * * * * *		
Substantially produced chemicals in need of subchronic tests:			
112–15–2	Ethanol, 2-(2-ethoxyethoxy)-, acetate	9/30/91	11/27/91
Sulphones:			
77–79–2	3-Sulfolene	9/30/91	11/27/91
	* * * * * * *		

PART 716–[AMENDED]

2. In part 716:

a. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

b. Section 716.120 is amended by adding, in CAS number sequence, two substances in paragraph (a), and in paragraph (d) by revising the entries for benzeneacetaldehyde, 4-methyl- under the "Aldehydes" category, 2-propenoic acid, (1-methylethylidene)bis(2,6-dibromo-4,1-phenylene) ester under the "Brominated flame retardants" category, revising the entry for carbinol acetate to read "ethanol, 2-(2-ethoxyethoxy)-, acetate" under the "Substantially produced chemicals in need of subchronic tests" category, revising the entry for sulfolene to read "3-Sulfolene" under the "Sulphones" category, and alphabetically adding one category to read as follows:

§ 716.120 Subtances and listed mixtures to which this subpart applies.

* * * * *

(a) * * *

CAS No.	Substance	Special exemptions	Effective date	Sunset date
	*	* * * * * *		
108–95–5	Thiophenol		1/26/94	1/26/04
	*	* * * * * *		
52907–07–0	Ethylene bis(5,6-dibromonorbornane-2,3-dicarboximide).		1/26/94	1/26/04
	*	* * * * * *		

(d) * * *

Category	CAS No.	Special exemptions	Effective date	Sunset date
* * * *	* *	*		
Aldehydes:				
Benzeneacetaldehyde, 4-methyl-	104-09-6		9/30/91	9/30/01
* * * *	* *	*		
Brominated flame retardants:				
2-Propenoic acid, (1-methylethylidene)bis(2,6-dibromo-4,1-phenylene) ester	55205-38-4		10/29/90	10/29/00
* * * *	* *	*		
Cyanoacrylates:				
2-Propenoic acid, 2-cyano-, methyl ester	137-05-3		1/26/94	1/26/04
2-Propenoic acid, 2-cyano-, isobutyl ester	1069-55-2		1/26/94	1/26/04
2-Propenoic acid, 2-cyano-3,3-diphenyl-, 2-ethylhexyl ester	6197-30-4		1/26/94	1/26/04
2-Propenoic acid, 2-cyano-, butyl ester	6606-65-1		1/26/94	1/26/04
2-Propenoic acid, 2-cyano-, ethyl ester	7085-85-0		1/26/94	1/26/04
2-Propenoic acid, 2-cyano-, 2-propenyl ester	7324-02-9		1/26/94	1/26/04
2-Propenoic acid, 2-cyano-, 1-methylethyl ester	10586-17-1		1/26/94	1/26/04
2-Propenoic acid, 2-cyano-, ethoxy ethyl ester	21982-43-4		1/26/94	1/26/04
2-Propenoic acid, 2-cyano-, 2,2,2-trifluoromethyl ester	23023-91-8		1/26/94	1/26/04
2-Propenoic acid, 2-cyano-, 2-methoxyethyl ester	27816-23-5		1/26/94	1/26/04
Ethanaminium, 2-[[2-cyano-3-[4-(diethylamino)phenyl]-1-oxo-2-propenyl]oxy]-*N,N,N*-trimethyl-, chloride	64992-16-1		1/26/94	1/26/04
* * * *	* *	*		
Substantially produced chemicals in need of subchronic tests:				
Ethanol, 2-(2-ethoxyethoxy)-, acetate	112-15-2		9/30/91	9/30/01
Sulphones:				
3-Sulfolene	77-79-2		9/30/91	9/30/01
* * * *	* *	*		

[FR Doc. 93-31269 Filed 12-23-93; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 93-233; DA 93-1518]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Final rule; change of effective date.

SUMMARY: By this Order, the Commission on its own motion changes the effective date established in the Report and Order in MM Docket No. 93-233. In order to be consistent with the Commission's stated desire to expedite proceedings involving amendment of the Commission's Rules regarding major cable television markets and the public interest in synchronizing such amendments with the copyright royalty accounting periods, the rule change adopted in this proceeding will become effective by the end of the year.

EFFECTIVE DATE: December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of Amendment of Section 76.51 of the Commission's Rules to Include Pine Bluff, Arkansas, in the Little Rock, Arkansas, Television Market.

Order

Adopted: December 14, 1993.

Released: December 16, 1993.

By the Chief, Mass Media Bureau: 1. In a Report and Order in the captioned proceeding (DA 93-1429, released November 30, 1993), § 76.51 of the Commission's rules were amended to include Pine Bluff, Arkansas, as a named community in the Little Rock television market. That change was to become effective thirty days after publication in the **Federal Register**. For the reasons discussed below, pursuant to 47 CFR 1.108, we reopen this proceeding on our own motion to reconsider one aspect of the Report and Order.

2. The process of amending § 76.51 of the Commission's Rules was mandated by section 614(f) of the 1992 Cable Act.[1] In adopting rules to implement the Act, the Commission indicated that proceedings of this type were to be undertaken pursuant to an expedited process[2] and further indicated agreement as to the public interest in synchronizing the Commission's rules with the compulsory license copyright royalty accounting periods (January 1-June 30 and July 1-December 31).[3] In order to achieve that synchronization in the context of this proceeding, consistent with the Commission's stated desire to expedite the resolution of proceedings of this type, and in order to achieve the objectives set forth in section 614 of the Cable Act, we find that good cause exists for making the rule changes adopted in this proceeding

[1] Cable Television Consumer Protection and Competition Act of 1992, Public Law 102-385, 106 Stat. 1460.

[2] *Report and Order* in MM Docket 92-259, 8 FCC Rcd 2965, para. 50 (1993), 58 FR 17350, April 2, 1993.

[3] *Id.* at para. 151.

effective on less than 30 days notice,[4] so that this becomes effective by the end of the year.

3. Accordingly, *it is ordered*, That the rule change effective date adopted in the Report and Order in MM Docket No. 93–233 (58 FR 64168, December 6, 1993) is reconsidered on our own motion and amended to become effective on December 31, 1993.

4. This action is taken by the Chief, Mass Media Bureau pursuant to authority delegated by § 0.283 of the Commission's Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93–31451 Filed 12–23–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB10

Captive-bred Wildlife Regulation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Under the Endangered Species Act of 1973 (Act), the Fish and Wildlife Service (Service) regulates certain activities involving specimens of non-native endangered or threatened wildlife species that are born in captivity in the United States. This is currently accomplished by requiring persons who wish to conduct otherwise prohibited activities with such wildlife to register with Service, i.e., to obtain a captive-bred wildlife, or CBW, registration. The Service registers persons who meet certain established requirements and specifies the extent of the activities that those persons are authorized to conduct.

The CBW registration system has been reviewed to determine whether changes are necessary. That review was announced in a Notice of Intent to Propose Rule (54 FR 548, January 7, 1992). A public meeting was held in April 1992. After review of information and comments received, a Proposed Rule was published on June 11, 1993 (58 FR 32632). Several changes to the CBW registration system were proposed. Also proposed were two changes to Definitions, that would affect issuance of all endangered and threatened species permits as well as CBW registrations. Those proposed changes included deletion of education from the definition of "enhance the propagation or survival" so that education of the public could no longer be used as the sole justification for issuance of permits and registrations. The Service has decided to limit this final rule to the exclusion of education as the basis for issuance of CBW registrations, because the original and predominant purpose of the registration system was to encourage responsible captive breeding. Other changes to the CBW system, as well as the larger question of public education as it relates to endangered species permits will be the subject of future rulemaking actions.

EFFECTIVE DATE: January 26, 1994.

FOR FURTHER INFORMATION CONTACT: R. K. Robinson, Special Assistant-Ecological Services, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203 (703/358–2093).

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et. seq.*) and implementing regulations prohibit any person subject to the jurisdiction of the United States from conducting certain activities with endangered or threatened species of fish or wildlife. These activities include, among others, import, export, take and interstate or foreign commerce. The Secretary of the Interior (or the Secretary of Commerce in the case of certain marine species) may permit such activities, under such terms and conditions as he/she shall prescribe, for scientific purposes or to enhance the propagation or survival of the affected species, provided these activities are consistent with the purposes of the Act. The Secretary of the Interior's authority to administer permit matters relating to endangered and threatened species has been delegated through the Director of the Fish and Wildlife Service (Service) to the Office of Management Authority (OMA).

Since 1976, the Service has been striving to achieve an appropriate degree of control over prohibited activities involving living wildlife of non-native species born in captivity in the United States.

In 1978, the Service announced a review of regulations concerning captive-bred wildlife (43 FR 16144, April 14, 1978). The notice reiterate the Service's philosophy concerning its approach to captive versus wild populations:

> The Service considers the purpose of the Act to be best served by conserving species *in the wild* along with their ecosystems. Populations of species in captivity are, in large degree, remove from their natural ecosystems and have a role in survival of the species only to the extent that they maintain genetic integrity and offer the potential of restocking natural ecosystems where the species has become depleted or no longer occurs * * *.
>
> The Service seeks to improve its regulations in order to protect wild populations of Endangered and Threatened species while interfering as little as possible with their captive propagation.

Following an extensive public review in 1978 and 1979, the Service published a final rule (44 FR 54002, September 17, 1979) that established the Captive-bred Wildlife (CBW) registration system as it currently exists. The final rule amended regulations in 50 CFR 17.21 by adding subsection 17.21(g), which granted general, conditional permission to take; import or export; deliver, receive, carry, transport or ship in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any non-native endangered or threatened wildlife that is bred in captivity in the United States. In other words, the regulation itself contains the permit. In order for persons or institutions to operate under that permit, certain conditions must be met, including that the person or institution must first register with the Service. Unless an exception is made under § 17.21(g)(5), the CBW system applies only to species that do not include any part of the United States in their natural geographic distribution. The individual specimens must have been born in captivity in the United States. The registration authorizes interstate purchase and sale only between entities that both hold a registration for the taxon concerned.

The 1979 final rule also amended the definition of "enhanced the propagation or survival" of wildlife in captivity to include a wide range of normal animal husbandry practices needed to maintain self-sustaining and genetically viable populations of wildlife in captivity. Other aspects of the definition of "enhance" that were codified in 1979 and are still in use today include accumulation, holding and transfer of animals not immediately needed or suitable for propagative or scientific purposes, and exhibition of living wildlife in a manner designed to educate the public about the ecological role and conservation needs of the affected species (50 CFR 17.3).

[4] The Administrative Procedure Act generally requires publication in the **Federal Register** of substantive rules 30 days prior to their effective date but permits substantive rules to become effective with less than 30 days' advance public in the **Federal Register** for good cause. See 5 U.S.C. § 553(d)(1); See also 47 CFR 1.427(b).

The above definitions are found in Subpart A, the General Provisions of part 17. Therefore, they apply to all endangered and threatened species permits for captive wildlife issued under §§ 17.22 and 17.32 as well as to the CBW registrations under § 17.21(g) that are the subject of this rulemaking.

After twelve years' experience with the system, the Service initiated another review with a Notice of Intent of Propose Rule, published on January 7, 1992 (54 FR 548). The notice discussed problems the Service was experiencing with the system, and offered for discussion three options intended to show the range of possible actions that might be taken. These ranged from no action (no change in the system) to complete elimination of the CBW registration process. The notice also questioned whether the term "harass" as defined in § 17.3 applied to captive-born wildlife, and whether education of the American public through exhibition of living non-native wildlife actually accomplished any measurable enhancement of the survival of the affected species in the wild. Three options for dealing with education were presented, ranging from no change in the existing definition to deleting education as a justification for permits and CBW registrations.

Public comments and suggestions were solicited. Written responses were received from 942 individuals, institutions and organizations. Of these, 170 mentioned education, mostly in favor of retaining it.

After review of comments received, the Service published a proposed rule on June 11, 1993 (58 FR 32632), that proposed several changes to § 17.21(g): elimination of registration for several species that are present in the United States in large numbers and/or that are genetically unsuitable for scientifically based breeding programs; restriction of eligibility for CBW registrations to those entities that are participants in an approved responsible cooperative breeding program for the taxon concerned; amendment of the definition of "harass" in § 17.3 to exclude normal animal husbandry practices such as humane and healthful care when applied to captive-born wildlife; and, conditionally, deletion of education from the definition of "enhance" in § 17.3.

Information and Comments

In an effort to ensure distribution of the proposal to those most directly affected, over 1,000 copies of the **Federal Register** publication were mailed to current and former CBW registrants. Three letters commented to the effect that they found it surprising that the Service did not notify all registrants. The Service apologizes if any registrants were inadvertently missed, but notes that based on available records, two of the three apparently do not hold registrations.

A total of 658 written comments were received during the comment period. Education was discussed in 544 letters, and was the only issue mentioned in 510 of them. The majority of these objected to the deletion of education from the definition of "enhance" in § 17.3. Issues other than education were addressed in 148 comments.

Several misconceptions were apparent in the responses. A large number of comments expressed concern or at least apparently assumed that deletion of education as the sole basis for obtaining permits and registrations would result in a ban on public display by many zoos, circuses and other entities. A smaller number were concerned that deletion of education might result in confiscation of animals currently used in educational displays.

It is important to note that deletion of education would in no way affect the lawful possession of non-native wildlife that are currently being displayed or held by zoos, circuses, performers and other entities.

Regardless of the change in § 17.21(g) made by this final rule, those persons who lawfully possess listed species may continue to display them for commercial or non-commercial purposes without a permit under the Act as long as prohibited takings (*e.g.*, harassment), transfers of ownership in interstate commerce in the course of a commercial activity, or exports are not involved.

Similarly, several commenters were concerned that collections of non-native animals could no longer be used for purposes of training in veterinary medicine, animal husbandry techniques, genetic research, etc. This is not the case; this final rule will not affect the continuation of such activities with lawfully possessed animals.

The Service does have sincere doubts about the relative conservation benefits that are provided to non-native species in the wild from the public exhibition of living wildlife. As noted by the Service in its proposed rule:

> * * * thus far no one has come forward with examples of how exhibition of living wildlife has any specific affirmative effect on survival of non-native species in the wild. Therefore, the Service proposes to delete education from the definition of "enhancement", but will consider changing its position in the final rule should specific evidence of conservation benefits be forthcoming during the comment period for this proposed rule. The Service recommends that any serious submission in favor of retaining education in this definition should be accompanied by suggested objective standards that the Service could use to assess the conservation benefits of educational displays.

Several commenters on the proposed rule did suggest standards and criteria to enable such assessment, and these are under consideration for possible application to endangered species permits under § 17.22. However, no comments were received that convince the Service that education has any role in the CBW registration system.

Discussion of Final Rule

As stated in the proposed rule (58 FR 32632):

> The Service proposes to amend the regulation regarding CBW registration in a manner that will make the system more closely parallel its original purpose, *i.e.*, to encourage responsible breeding efforts with listed species. The required goals of the program would be to preserve the genetic makeup of the species, to establish a self-sustaining captive population, and to make animals available for any legitimate and appropriate effort to re-establish or augment wild populations of the species.

The CBW system involves a special regulatory exception (a general permit available to all qualified members of the public) adopted by the Service in 1979 to allow entities in the United States to purchase in interstate commerce endangered captive-bred non-native species, to sell or exchange these specimens in interstate commerce with other CBW registrants, and to take these specimens in accordance with customary animal husbandry practices. The specimens must have been born in captivity in the United States. The CBW registration is not a possession permit because mere possession of an endangered species is not a violation of the Act. The registration allows breeders and exhibitors of wildlife to buy, sell and exchange living specimens of non-native listed species without seeking individual permits for each transaction. The Service granted general permission to those registered under the CBW system in order to encourage and facilitate the captive breeding of non-native listed wildlife by entities in the United States. The Service's intent to enhance beneficial captive breeding activities has been amply documented in seven notices and rulemaking documents published since 1976. However, given the definition of "enhance" in § 17.3, as well as preamble language in the 1979 final rule that established the CBW system, the decision criteria in § 17.21(g) were too

broadly crafted to strictly limit issuance of CBW registrations to captive breeding, and in situations where there was no intention to engage in captive breeding of the listed species, the criteria allowed education through public exhibition as the sole activity of the registrant.

The Service has decided to limit this final rule to the narrow issue of education as it relates to the CBW system. The rule eliminates public education through exhibition of living wildlife as the sole justification for issuance of a CBW registration. This should not be interpreted to mean that the Service believes that educational efforts should cease, since in general terms education is a public good. However, the scope of the CBW program must be narrowed so that only those persons who engage in beneficial captive breeding can participate.

A final rule addressing the remaining issues concerning the CBW system will be promulgated in the near future.

In today's **Federal Register** the Service is reopening the comment period on the balance of the proposed rule, and in particular on the larger question of what value education provides to the conservation of non-native species in the wild, as it applies to permits issued under § 17.22. In the meantime, those persons or entities that hold CBW registrations based solely on education that have not reached the expiration date shown thereon as of the effective date of this rule will be allowed to exercise them for a period of two years from the effective date.

Regulatory Analysis

This rule has been reviewed under Executive Order 12866. The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), because no significant burden will be added to the already mandated paperwork requirements, preparation or administration, and similar requirements that have been imposed by the existing rule.

The Service has determined that these regulations are categorically excluded from further National Environmental Policy Act (NEPA) requirements. Part 516 of the Departmental Manual, Chapter 6, Appendix I, section 1.4(A)(1) categorically excludes changes or amendments to an approved action when such changes have no potential for causing substantial environmental impact. Further, Appendix I, section 1.4(C)(1) categorically excludes permitting actions not involving killing, removal from the wild, or permanent impairment of reproductive capability of endangered or threatened species. No increase in the latter activities is expected to result from this revision of the existing rule.

No aggregate increase in the burden on affected individuals would be made in the information collection requirements contained in § 17.21(g), which have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0022.

Finally the Department of the Interior has determined that this action, which amends regulations that implement exceptions to prohibitions of the Act, does not contain significant takings implications as described in Executive Order 12630.

Author

The primary author of this final rule is R.K. Robinson, Special Assistant—Ecological Services, U.S. Fish and Wildlife Service, room 420C, 4401 North Fairfax Drive, Arlington, VA 22203.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

For the reasons set forth in the preamble, title 50, chapter 1, subchapter B, part 17, subpart C is amended as set forth below.

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500.

Subpart C—Endangered Wildlife

2. Section 17.21(g) is amended by revising paragraph (g)(1) introductory text to read as follows:

§ 17.21 Prohibitions.

* * * * *

(g) *Captive-bred wildlife.* (1) Notwithstanding paragraphs (b), (c), (e) and (f) of this section, any person may take; import or export; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife that is bred is captivity in the United States, provided the principal purpose of these activities is to facilitate captive breeding, and provided the following conditions are met:

* * * * *

Dated: December 6, 1993.

George T. Frampton,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 93–31422 Filed 12–21–93; 3:10 pm]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 931088–3333; ID 102193A]

RIN 0648–AF64

Reef Fish Fishery of the Gulf of Mexico

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

ACTION: Final rule.

SUMMARY: In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), NMFS issues this final rule to restrict the commercial landings of red snapper to one trip limit per vessel per day; prohibit the sale or purchase of red snapper exceeding one trip limit per vessel per day; and delay the opening of the commercial fishery for red snapper until February 10, 1994. The intended effects of this rule are to lengthen the commercial season for red snapper, to facilitate enforcement of the trip limits, to minimize fishing during hazardous winter weather, and to ensure that the commercial red snapper fishery is open during Lent, when there is increased demand for seafood.

EFFECTIVE DATES: January 1, 1994, through December 31, 1994, except that §§ 641.4(n)(3), 641.7(x), and 641.30 are effective January 1, 1994, through February 9, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–893–3161.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

In accordance with the FMP's framework procedure for adjustment of

management measures, the Council proposed the measures listed above. The backgrounds and rationales for the measures were contained in the proposed rule (58 FR 59230, November 8, 1993) and are not repeated here.

Comments and Responses

Two individuals commented on the proposed rule. One of the individuals expressed his views on the fairness and equity of the red snapper trip limits. Since the comment is outside the scope of the proposed rule, it has been forwarded to the Council for consideration.

Comment: One individual objected to the delayed opening of the red snapper season until February 10, 1994, because he believes that the local weather worsens in February and income from red snapper is important to him at the start of the new year.

Response: The February 10 opening date was requested by fishermen to ensure that the red snapper fishery would be open through the Lenten season. Most fishermen support the delayed opening as a means of satisfying higher demand for fresh fish when exvessel prices are higher. Available information does not indicate that the delayed opening will cause significant adverse impacts on either the fishery or the red snapper resource. Accordingly, NMFS concurs with the delayed opening.

Approval of Framework Adjustments

Having taken into consideration all information received, the Director, Southeast Region, NMFS, concurs that the Council's recommended changes are consistent with the objectives of the FMP, the national standards, and other applicable law, as required by the FMP for implementation of framework measures. Accordingly, the framework measures are approved.

Addendum

A prohibition is added at § 641.7(x) regarding the closure of the commercial fishery for red snapper from January 1, 1994, through February 9, 1994.

Classification

The Council prepared a regulatory impact review (RIR) on this action, the conclusions of which were summarized in the proposed rule and are not repeated here.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities for the reasons summarized in the proposed rule. Accordingly, a regulatory flexibility analysis was not prepared.

The intended effects of this final rule include minimizing fishing during hazardous winter weather and ensuring that the commercial red snapper fishery is open during Lent, when there is increased demand for seafood. These intended effects will be seriously degraded if the effective date of this final rule is delayed beyond the currently scheduled opening of the red snapper fishery on January 1, 1994. Accordingly, under the provisions of section 553(d)(3) of the Administrative Procedure Act, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impracticable and contrary to the public interest to delay for 30 days the effective date of this rule.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 21, 1993.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

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

2. In § 641.4, paragraph (n)(1) is revised, effective from January 1, 1994, through December 31, 1994; and new paragraph (n)(3) is added, effective from January 1, 1994, through February 9, 1994; to read as follows:

§ 641.4 Permits and fees.

* * * * *

(n) * * *

(1) May not exceed the appropriate vessel trip or landing limits for red snapper, as specified in § 641.21(d)(1), (d)(2), and (d)(4).

* * * * *

(3) Must abide by the red snapper closure provisions of § 641.30.

3. In § 641.7, paragraph (u) is revised and new paragraph (w) is added, effective from January 1, 1994, through December 31, 1994; and new paragraph (x) is added, effective from January 1, 1994, through February 9, 1994, to read as follows:

§ 641.7 Prohibitions.

* * * * *

(u) Exceed the vessel trip or landing limits for red snapper, as specified in § 641.21(d)(1), (d)(2), and (d)(4).

* * * * *

(w) Purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a red snapper possessed or landed in excess of a trip limit contained in § 641.21(d)(1) or (d)(2) or the landing limit contained in § 641.21(d)(4), as specified in § 641.21(d)(5).

(x) Exceed the bag and possession limits for red snapper or purchase, barter, trade, or sell red snapper during the closure of the commercial fishery for red snapper, as specified in § 641.30.

4. In § 641.21, the heading of paragraph (d) is revised and new paragraphs (d)(4) and (d)(5) are added, effective from January 1, 1994, through December 31, 1994, to read as follows.

§ 641.21 Harvest limitations.

* * * * *

(d) *Red snapper limitations.*

* * * * *

(4) A vessel for which a reef fish permit has been issued under § 641.4 may not land in any day red snapper in excess of 200 pounds (91 kg) or 2,000 pounds (907 kg), as appropriate under paragraph (d)(1) or (d)(2) of this section.

(5) No person may purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a red snapper possessed or landed in excess of the trip or landing limits specified in paragraphs (d)(1), (d)(2), and (d)(4) of this section.

5. A new § 641.30 is added, effective from January 1, 1994, through February 9, 1994, to read as follows:

§ 641.30 Closure of the commercial fishery for red snapper.

Other provisions of this part 641 notwithstanding, the commercial fishery for red snapper is closed from January 1, 1994, through February 9, 1994. During this closure of the commercial fishery, the bag and possession limits, as specified in § 641.24(b)(1) and (c), and the prohibition of purchase, barter, trade, or sale of red snapper taken under the bag limit, as specified in § 641.24(g), apply to red snapper harvested from or possessed in the EEZ and to each vessel for which a currently valid reef fish permit has been issued under § 641.4.

[FR Doc. 93–31455 Filed 12–23–93; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 642

[Docket No. 930791–3191; I.D. 122093A]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit in the southern zone to 1000 pounds (454 kg) of Spanish mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Atlantic Spanish mackerel resource.

EFFECTIVE DATES: The 1000-pound (454-kg) commercial trip limit is effective on December 22, 1993, and remains in effect through March 31, 1994, unless the commercial trip limit for Spanish mackerel from the southern zone is further reduced before March 31 by publication of a notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3161.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642, under the authority of the Magnuson Fishery Conservation and Management Act.

An adjusted allocation and commercial trip limits were recommended by the Councils and implemented by NMFS for Atlantic migratory group Spanish mackerel for the current fishing year (April 1, 1993, through March 31, 1994, 58 FR 45847, August 31, 1993). As set forth at 50 CFR 642.27(b), the adjusted allocation is 4.25 million pounds (1.93 million kg). In accordance with 50 CFR 642.27(a)(2)(iii), after 75 percent of the adjusted allocation of Atlantic group Spanish mackerel is taken until 100 percent of the adjusted allocation is taken, Spanish mackerel in or from the EEZ in the southern zone may not be possessed aboard or landed from a vessel per day in amounts exceeding 1,000 pounds (454 kg). In accordance with 50 CFR 642.27(a)(2)(iv), after 100 percent of the adjusted allocation of Atlantic group Spanish mackerel is taken, Spanish mackerel in or from the EEZ in the southern zone may not be possessed aboard or landed from a vessel per day in amounts exceeding 500 pounds (227 kg).

NMFS has determined that 75 percent of the adjusted allocation for Atlantic group Spanish mackerel from the southern zone was taken on December 21, 1993. Accordingly, the 1000-pound (454–kg) daily commercial trip limit applies to Spanish mackerel in or from the EEZ in the southern zone effective 12:01 a.m., local time, December 22, 1993.

The southern zone extends from the Georgia/Florida boundary (30°42′45.6″N. latitude) southward to the Dade/Monroe County, Florida, boundary (25°20.4′N. latitude).

Classification

This action is required by 50 CFR 642.27(a)(2)(iii) and (b).

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

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 21, 1993.

David S. Crestin,

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

[FR Doc. 93–31465 Filed 12–21–93; 4:08 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 246
Monday, December 27, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AGL–25]

Proposed Establishment of Class E Airspace; Oscoda, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Oscoda, MI. A Very High Frequency Omnidirectional Range (VOR) standard instrument approach procedure (SIAP) has been developed at Oscoda-Wurtsmith Airport, and controlled airspace to the surface is needed to contain instrument flight rules (IFR) operations at the airport. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the established SIAP.

DATES: Comments must be received on or before February 7, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AGL–530, Federal Aviation Administration, Docket No. 93–AGL–25, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the office of the Assistant Chief Counsel, AGL–7 at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, System Management Branch, AGL–530, at the address above.

FOR FURTHER INFORMATION CONTACT:

Robert Frink, Manager, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7573.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AGL–25." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, AGL–530, Air Traffic Division, at 2300 East Devon Avenue, Des Plains, Illinois, 60018, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, AGL–530, Air Traffic Division, 2300 East Devon Avenue, Des Plaines, Illinois, 60018. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Oscoda, MI. An Automated Weather Observation System (AWOS) has been installed at the Oscoda-Wurtsmith Airport that will continuously provide weather data, and a non-federal VOR SIAP has been established. Controlled airspace to the surface is needed to contain IFR operations at the airport. Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "control zone," and airspace designated from the surface, including any arrival extensions, for an airport where there is no operating control tower is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the VOR SIAP at Oscoda-Wurtsmith Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Oscoda, MI [New]

Oscoda-Wurtsmith Airport, MI
(lat. 44°27'05" N., long. 83°23'39" W.)
AuSable VORTAC
(lat. 44°26'49" N., long. 83°24'05" W.)

Within a 4.5-mile radius of Oscoda-Wurtsmith Airport and within 2.4 miles each side of the AuSable VORTAC 238° radial extending from the 4.5-mile radius to 7 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advanced by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–31463 Filed 12–23–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AGL–24]

Proposed Establishment of Class E Airspace; St. James, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at St. James, Michigan. A Nondirectional Radio Beacon (NDB) standard instrument approach procedure (SIAP) has been developed at Beaver Island Airport, and controlled airspace is needed to contain instrument flight rules (IFR) operations at the airport. Controlled airspace extending from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

DATES: Comments must be received on or before February 7, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, AGL–530, Federal Aviation Administration, Docket No. 93–AGL–24, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, AGL–7 at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Airspace and System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Robert Frink, Manager, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7573.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AGL–24." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, AGL–530, Air Traffic Division, at 2300 East Devon Avenue, Des Plaines, Illinois 60018, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, AGL–530, Air Traffic Division, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at St. James, Michigan, to provide controlled airspace from 700 to 1200 feet AGL for aircraft executing the NDB SIAP into the Beaver Island Airport. Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by references in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 St. James, MI [New]

Beaver Island Airport, MI
(lat. 45°41'35"N., long. 85°33'50"W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of the Beaver Island Airport and within 2.475 miles each side of the 090° bearing of the Beaver Island Airport extending from the 6.2-mile radius to 7 miles east of the airport.

* * * * *

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

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–31464 Filed 12–23–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–57–93]

RIN 1545–AS26

Allocation of Costs to Lobbying Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations concerning rules for allocating costs to lobbying activities. These rules will assist businesses and certain tax-exempt organizations in complying with changes to the tax law made by section 13222 of the Omnibus Budget Reconciliation Act of 1993. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by February 25, 1994. A public hearing is scheduled for Wednesday, April 6, 1994. Persons wishing to speak at the hearing must submit outlines of their comments by Wednesday, March 16, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (IA–57–93), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be delivered to: CC:DOM:CORP:T:R (IA–57–93), Internal Revenue Service, room 5228, 1111 Constitution Avenue NW., Washington, DC 20224. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Mike Slaughter, Regulations Unit at 202–622–7190; concerning the regulations, Ellen McElroy, 202–622–4950, and James M. Guiry, 202–622–1585. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed Income Tax Regulations under section 162 of the Internal Revenue Code (Code) as amended by section 13222 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (107 Stat. 477). These rules relate to allocating costs to lobbying activities.

Explanation of Provisions

In General.

Section 13222 of OBRA 1993 amended section 162(e) of the Code to deny a deduction for amounts paid or incurred in connection with influencing legislation and influencing certain federal executive branch officials (lobbying activities). The IRS is proposing these rules to assist businesses and tax-exempt organizations in determining the nondeductible amount, i.e., the costs allocated to lobbying activities.

Section 6001 and the regulations thereunder require taxpayers to keep records. The proposed regulations do not require taxpayers to maintain any particular records of costs of lobbying activities, such as daily time reports, daily logs, or similar documents, other than those generally required by section 6001 and the regulations thereunder.

The proposed regulations generally describe the costs that are properly allocable to lobbying activities and permit taxpayers to use any reasonable method to allocate those costs between lobbying activities and other activities. A method is not reasonable unless it is applied consistently, allocates a proper amount of costs (including labor costs and general and administrative costs) to lobbying activities, and is consistent with certain special rules of the regulations, discussed below. The regulations provide that a taxpayer may use the following methods of allocating costs to lobbying activities: (1) The ratio method; (2) the gross-up method; and (3) an allocation method that applies the principles of section 263A and the regulations thereunder.

The ratio method operates as follows. A taxpayer multiplies its total costs of operations (excluding third-party costs) by a fraction, the numerator of which is the taxpayer's lobbying labor hours and the denominator of which is the taxpayer's total labor hours. The taxpayer adds the result of this calculation to its third-party costs. Third-party costs are amounts paid or incurred for lobbying activities conducted by third parties (such as amounts paid to taxpayers subject to section 162(e)(5)(A) or dues or other similar amounts that are not deductible under section 162(e)(3)) and amounts paid or incurred for travel (including meals and lodging while away from home) and entertainment relating to lobbying activities. The taxpayer's total costs allocated to lobbying activities is the sum of the amount determined by use of the ratio (as described above) and its third-party costs.

A taxpayer using the ratio method may treat as zero the hours spent by personnel engaged in secretarial, maintenance, and other similar activities. A taxpayer treating these hours as zero must do so for determining both lobbying labor hours and total labor hours. Costs for these personnel must be included, however, in the total costs of operations.

Under the gross-up method, a taxpayer allocates costs to lobbying activities by multiplying the taxpayer's basic labor costs for lobbying labor hours by 175 percent. For this purpose, the taxpayer's basic labor costs are limited to wages or other similar costs of labor, such as guaranteed payments

for services. Thus, for example, pension costs and other employee benefits are not included in basic labor costs. As with the ratio method, third party costs are then added to the result of the calculation to arrive at the total costs allocated to lobbying activities.

Taxpayers that do not pay or incur reasonable labor costs for persons engaged in lobbying activities may not use the ratio method or the gross-up method. For example, a partnership or sole proprietorship in which the lobbying activities are performed by the owners who do not receive a salary or guaranteed payment for services does not pay or incur reasonable labor costs for persons engaged in those activities and may not use the ratio method or the gross-up method.

Because many taxpayers engaged in lobbying activities are subject to section 263A of the Code, the regulations permit taxpayers to use the principles of that section and the regulations thereunder to determine costs properly allocable to lobbying activities. Specifically, under section 263A, lobbying is considered a service department or function. Therefore, a taxpayer may use its section 263A methodology to determine the amount of costs allocable to its lobbying department or function for purposes of complying with these regulations. Taxpayers not subject to section 263A may also use the principles of that section and the regulations thereunder to determine the amount of costs allocable to lobbying activities.

Special Rules

The proposed regulations provide a special de minimis rule for labor hours spent by personnel on lobbying activities. Under this de minimis rule, a taxpayer may treat time spent by personnel on lobbying activities as zero if less than five percent of the person's time is spent on lobbying activities.

The de minimis rule for labor hours does not apply to direct contact lobbying with legislators and covered executive branch officials. Thus, all hours spent by a person on direct contact lobbying as well as the hours that person spends in connection with direct contact lobbying (such as background meetings) must be allocated to lobbying activities. For this purpose, an activity is direct contact lobbying if it is a meeting, telephone conversation, letter, or other similar means of communication with a legislator (other than a local legislator), or covered executive branch official (as defined in section 162(e)(6)) and otherwise qualifies as a lobbying activity.

The hours spent in a meeting are not treated as hours spent engaged in a lobbying activity if no substantial purpose of the meeting is a lobbying activity. Unless the facts and circumstances clearly indicate otherwise, it will be presumed that a substantial purpose of a meeting with a federal or state legislator, a member of the staff of a federal or state legislator, a member of the staff of a federal or state legislative joint committee or similar body, or a covered executive branch official (as defined in section 162(e)(6)) is a lobbying activity. Thus, for example, a taxpayer merely attending a widely-attended speech by a legislator would not treat the hours attending the meeting as hours spent engaged in lobbying activities absent unusual facts.

The proposed regulations do not apply to the expenditures of taxpayers subject to section 162(e)(5)(A), which provides special rules for taxpayers who are engaged in the trade or business of conducting lobbying activities on behalf of another person.

Comments Requested

These proposed rules relate only to two types of expenses to which section 162(e)(1) applies (influencing legislation or certain federal executive branch officials). The IRS believes that other activities covered by section 162(e)(1), (i.e., grassroots lobbying and participation in political campaigns), are more capital intensive than influencing legislation. The proposed regulations, which focus primarily on hours, may not allocate an appropriate portion of costs to grassroots lobbying and participation in political campaigns. The IRS invites comments on appropriate modifications to these rules to apply to all costs covered by section 162(e)(1). The IRS also invites comments on reasonable methods of allocating costs to the lobbying activities of taxpayers that do not pay or incur reasonable labor costs for persons engaged in lobbying activities.

Further, the IRS invites comments on whether treating as zero the hours spent by personnel engaged in secretarial, maintenance, and other similar activities will distort the costs allocated to lobbying activities.

Finally, the IRS is considering making the regulations effective on January 1, 1994. The IRS invites comments on an appropriate effective date for the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Wednesday, April 6, 1994, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of § 601.601(a)(3) apply to the public hearing.

Persons that have submitted written comments by February 25, 1994, and want to present oral comments at the hearing must submit by Wednesday, March 16, 1994, an outline of the topics to be discussed and the time to be devoted to each topic. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Ellen McElroy and James M. Guiry, Office of Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.162–28 is added to read as follows:

§ 1.162–28 Allocation of costs to lobbying activities.

(a) *Introduction*—(1) *In general.* Section 162(e)(1) denies a deduction for certain amounts paid or incurred in connection with activities described in section 162(e)(1)(A) and (D) (*lobbying activities*). To determine the nondeductible amount, a taxpayer must allocate costs to lobbying activities. This section describes costs that must be allocated to lobbying activities and prescribes rules permitting a taxpayer to use a reasonable method to allocate those costs. This section does not apply to taxpayers subject to section 162(e)(5)(A).

(2) *Recordkeeping.* For recordkeeping requirements, see section 6001 and the regulations thereunder.

(b) *Reasonable method of allocating costs*—(1) *In general.* A taxpayer may use any reasonable method to allocate costs described in paragraph (c) of this section to lobbying activities. A method is not reasonable unless it is applied consistently, allocates a proper amount of the costs described in paragraph (c) of this section to lobbying activities, and is consistent with the special rules in paragraph (g) of this section. A taxpayer, other than one described in paragraph (b)(2) of this section, may use any of the following methods of allocating costs—

(i) The ratio method described in paragraph (d) of this section;

(ii) The gross-up method described in paragraph (e) of this section; and

(iii) A method that applies the principles of section 263A and the regulations thereunder (see paragraph (f) of this section).

(2) *Taxpayers not permitted to use certain methods.* A taxpayer that does not pay or incur reasonable labor costs for persons engaged in lobbying activities may not use the ratio method or the gross-up method. For example, a partnership or sole proprietorship in which the lobbying activities are performed by the owners who do not receive a salary or guaranteed payment for services does not pay or incur reasonable labor costs for persons engaged in those activities and may not use the ratio method or the gross-up method.

(c) *Costs allocable to lobbying activities*—(1) *In general.* Costs properly allocable to lobbying activities include labor costs and general and administrative costs.

(2) *Labor costs.* For each taxable year, labor costs allocable to lobbying activities include costs attributable to full-time, part-time, and contract employees. Labor costs include all elements of compensation, such as basic compensation, overtime pay, vacation pay, holiday pay, sick leave pay, payroll taxes, pension costs, employee benefits, and payments to a supplemental unemployment benefit plan.

(3) *General and administrative costs.* For each taxable year, general and administrative costs allocable to lobbying activities include depreciation, rent, utilities, insurance, maintenance costs, security costs, and other administrative department costs (for example, payroll, personnel, and accounting).

(d) *Ratio method*—(1) *In general.* Under the ratio method described in this paragraph (d), a taxpayer determines its costs properly allocable to lobbying activities by adding the taxpayer's third-party costs (as defined in paragraph (d)(5) of this section) to the costs determined by using the following formula:

$$\frac{\text{Lobbying labor hours}}{\text{Total labor hours}} \times \text{Total costs of operations.}$$

(2) *Lobbying labor hours.* Lobbying labor hours are the hours that a taxpayer's personnel spend on lobbying activities during the taxable year. A taxpayer may use any reasonable method to determine the number of labor hours spent on lobbying activities and may use the de minimis rule for labor hours of paragraph (g)(1) of this section. A reasonable method may treat as zero the lobbying labor hours of personnel engaged in secretarial, maintenance, and other similar activities.

(3) *Total labor hours.* Total labor hours means the total number of hours of labor that a taxpayer's personnel spend on a taxpayer's trade or business during the taxable year. A taxpayer may make reasonable assumptions concerning total hours worked by its personnel during the year. For example, it may be reasonable, based on all the facts and circumstances, to assume that all full-time personnel spend 1,800 hours per year on a taxpayer's trade or business. If, under paragraph (d)(2) of this section, a taxpayer treats as zero the lobbying labor hours of personnel engaged in secretarial, maintenance, and other similar activities, the taxpayer must also treat as zero the total labor hours of these personnel.

(4) *Total costs of operations.* A taxpayer's total costs of operations means the total costs of the taxpayer's trade or business for a taxable year, excluding third-party costs (as defined in paragraph (d)(5) of this section).

(5) *Third-party costs.* Third-party costs are amounts paid or incurred for lobbying activities conducted by third parties (such as amounts paid to taxpayers subject to section 162(e)(5)(A) or dues or other similar amounts that are not deductible under section 162(e)(3)) and amounts paid or incurred for travel (including meals and lodging while away from home) and entertainment relating to lobbying activities.

(6) *Example.* The provisions of this paragraph (d) are illustrated by the following example:

Example. Ratio method—(i) In 1994, three full-time employees, A, B, and C, of Taxpayer W engaged in both lobbying activities and non-lobbying activities. A spends 300 hours, B spends 1,700 hours, and C spends 1,000 hours on lobbying activities, for a total of 3,000 hours spent on lobbying activities for W. W reasonably assumes that each of its three employees spends 2,000 hours a year on W's business.

(ii) W's total costs of operations are $300,000. W has no third-party costs.

(iii) Under the ratio method, $150,000 is properly allocable to X's lobbying activities for 1994, as follows:

$$\frac{\text{Lobbying labor hours}}{\text{Total labor hours}} \times \text{Total costs of operations} + \text{Third-party costs} = \text{Costs allocable to lobbying activities}$$

$$\left[\frac{300+1700+1000}{6000} \times \$300,000\right] + [0] = \$150,000.$$

(e) *Gross-up method*—(1) *In general.* Under the gross-up method described in this paragraph (e), the taxpayer's costs for any taxable year properly allocable to lobbying activities are 175 percent of its basic labor costs (as defined in paragraph (e)(2) of this section) plus third-party costs (as defined in paragraph (d)(5) of this section).

(2) *Basic labor costs.* For purposes of this paragraph (e), basic labor costs are the basic costs of lobbying labor hours (as defined in paragraph (d)(2) of this section, except that a taxpayer may not treat as zero the lobbying labor hours of personnel who engage in secretarial, maintenance, and other similar activities if they engage in lobbying activities). For purposes of this paragraph (e), basic costs of lobbying labor hours are wages or other similar costs of labor, including, for example, guaranteed payments for services. Basic costs do not include pension, profit-sharing, employee benefits, and supplemental unemployment benefit plan costs, as well as other similar costs.

(3) *Example.* The provisions of this paragraph (e) are illustrated by the following example:

Example. Gross-up method—(i) In 1994, three employees, A, B, and C, of Taxpayer X engaged in both lobbying activities and non-lobbying activities. A spends 300 hours, B spends 1,700 hours, and C spends 1,000 hours on lobbying activities.

(ii) X has no third-party costs.

(iii) For purposes of the gross-up method, X determines that its basic labor costs are $20 per hour for A, $30 per hour for B, and $25 per hour for C. Thus, its basic labor costs are ($20 x 300) + ($30 x 1,700) + ($25 x 1,000), or ($6000 + $51,000 + $25,000), for total basic labor costs for 1994 of $82,000.

(iv) Under the gross-up method, $143,500 is properly allocable to X's lobbying activities for 1994, as follows:

$$175\% \times \text{Labor costs allocable to lobbying activities} + \text{Third-party costs} = \text{Costs allocable to lobbying activities}$$

$$[175\% \times \$82,000] + [0] = \$143,500.$$

(f) *Section 263A cost allocation methods*—(1) *In general.* A taxpayer may determine the costs properly allocable to lobbying activities under the principles set forth in section 263A and the regulations thereunder. For this purpose, lobbying activities are considered a service department or function. Therefore, a taxpayer may allocate costs to lobbying activities by applying the methods provided in § 1.263A–1 through § 1.263A–3. See § 1.263A–1(e)(4), which describes service costs generally; § 1.263A–1(f), which sets forth cost allocation methods available under section 263A; and § 1.263A–1(g)(4), which provides methods of allocating service costs.

(2) *Example.* The provisions of this paragraph (f) are illustrated by the following example:

Example. Section 263A cost allocation method—(i) Three full-time employees, A, B, and C, work in the Washington office of Taxpayer Y, a manufacturing concern. They each engage in lobbying activities, as defined in sections 162(e)(1)(A) and (D), and non-lobbying activities. In 1994, A spends 75 hours, B spends 1,750 hours, and C spends 2,000 hours on lobbying activities. A's hours are not spent on direct contact lobbying as defined in paragraph (g)(2) of this section. All three work 2,000 hours during 1994. The Washington office also employs one secretary, D, who works exclusively for A, B, and C.

(ii) In addition, three departments in the corporate headquarters in Chicago benefit the Washington office: public affairs, human resources, and insurance.

(iii) Y is subject to section 263A and uses the step-allocation method to allocate its service costs. Prior to the changes under section 162(e), the Washington office was treated as an overall management function for purposes of section 263A. As such, its costs were fully deductible and no further allocations were made under Y's step allocation. Following the changes to section 162(e), Y adopts its 263A step-allocation methodology to allocate costs to lobbying activities. Y adds a lobbying department to its step-allocation program, which results in an allocation of costs to the lobbying department from both the Washington office and the Chicago office.

(iv) Y develops a labor ratio to allocate its Washington office costs between the newly-defined lobbying department and the overall management department. Y's labor ratio is determined as follows—

DEPARTMENTS

Employee	Lobbying hours	Overall management hours	Total hours
A	0	2,000	2,000
B	1,750	250	2,000
C	2,000	0	2,000
Totals	3,750	2,250	6,000

Lobbying Department
Ratio=3,750÷6,000=62.5%

Overall Management Department
Ratio=2,250÷6,000=37.5%

(v) To determine the hours allocable to lobbying activities, Y uses the de minimis rule of paragraph (g)(1) of this section. Under

this rule, A's hours spent engaged in lobbying activities are treated as zero because less than 5 percent of A's time is spent on lobbying (75 / 2,000 = 3.75%). In addition, because D works exclusively for personnel engaged in lobbying activities, D's hours are not used to develop the allocation ratio. Y assumes that D's allocation of time follows the average time of all the personnel engaged in lobbying activities.

(vi) In 1994, the Washington office has the following costs—

Account	Amount
Professional Salaries and Benefits	$660,000
Clerical Salaries and Benefits	50,000
Rent Expense	100,000
Depreciation on Furniture and Equip	40,000
Utilities	15,000
Outside Payroll Service	5,000
Miscellaneous	10,000
Third-Party Lobbying (Law Firm)	90,000
Total Washington Costs	$970,000

(vii) The Washington office costs are allocated to the Lobbying and Overall Management departments as follows—

Total Washington department costs from above		$970,000
Less third-party costs directly allocable to lobbying		(90,000)
Total Washington office costs		$880,000
	Lobbying department	Overall mgmt. department
Department Allocation Ratios	62.5%	37.5%
x Washington Office Costs	$880,000	$880,000
= Costs Allocated To Departments	$550,000	330,000

(viii) In addition, $146,125 of costs from the public affairs department, $18,875 of costs from the insurance department and $3,000 from the human resources department are allocable to the Washington office. Therefore, Y's step-allocation for its Lobbying Department is determined as follows—

Y's step-allocation	Lobbying department
Washington Costs Allocated to Lobbying Department	$550,000
Plus Costs Allocated From Other Departments:	
Public Affairs	146,125
Insurance	18,875
Human Resources	3,000
Total Costs of Lobbying Department	$718,000
Plus Third-Party Costs	90,000
Total Costs of Lobbying Activities	$808,000

(g) *Special rules.* The following rules apply to any reasonable method of allocating costs to lobbying activities.

(1) *De minimis rule for labor hours.* Subject to the exception provided in paragraph (g)(2) of this section, a taxpayer may treat time spent by personnel on lobbying activities as zero if less than five percent of the person's time is spent on lobbying activities. Reasonable methods must be used to determine if less than five percent of a person's time is spent on lobbying activities.

(2) *Direct contact lobbying labor hours*—(i) *In general.* Notwithstanding paragraph (g)(1) of this section, a taxpayer must treat all hours spent by a person on direct contact lobbying (as well as the hours that person spends in connection with direct contact lobbying, including time spent traveling) as labor hours allocable to lobbying activities. An activity is direct contact lobbying if it is a meeting, telephone conversation, letter, or other similar means of communication with a legislator (other than a local legislator), or covered executive branch official (as defined in section 162(e)(6)) and otherwise qualifies as a lobbying activity.

(ii) *Example.* The provisions of this paragraph (g)(2) are illustrated by the following example:

Example. During 1994, 4% of the time of Taxpayer Z's Chief Executive Officer (CEO) is spent in direct contact lobbying involving actual meetings with legislators, preparation for the meetings, and travel. The CEO does not engage in any other lobbying activity. Although the CEO's time allocable to lobbying activities is less than 5%, Z may not use the de minimis rule of paragraph (g)(1) of this section to account for the CEO's lobbying labor hours that involve direct contact lobbying. Therefore, Z must allocate 4% of the CEO's total labor hours to lobbying activities.

(3) *Meetings.* If no substantial purpose of a meeting is a lobbying activity, a taxpayer may treat the meeting as involving no lobbying activity, and, therefore, the hours spent in the meeting are not treated as hours engaged in lobbying activities. It is presumed that a substantial purpose of a meeting with a federal or state legislator, a member of the staff of a federal or state legislator, a member of the staff of a federal or state legislative joint committee or similar body, or a covered executive branch official (as defined in section 162(e)(6)) is a lobbying activity. However, a taxpayer may rebut this presumption by showing that the facts and circumstances clearly indicate that no substantial purpose of such a meeting is a lobbying activity. For example, absent unusual circumstances, a taxpayer who merely attends a widely-attended speech by a legislator would not treat the hours of attending the meeting as hours spent on lobbying activities.

(4) *Taxpayer defined.* For purposes of this section, a taxpayer includes a tax-exempt organization subject to section 6033(e).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93–31402 Filed 12–23–93; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 1

[IA–60–93]

RIN 1545–AS18

Lobbying Expense Deductions—Dues

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of proposed rulemaking by cross-reference to temporary regulations; notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations to revise the rules governing the deductibility, under section 162 of the Internal Revenue Code, of dues or other similar amounts paid to certain tax-exempt organizations that participate in political campaigns, or engage in lobbying or similar activities. Changes to the tax law were made by section 13222 of the Omnibus Budget Reconciliation Act of 1993. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by February 25, 1994. A public hearing is scheduled for Thursday, April 7, 1994, beginning at 10 a.m. Persons wishing to speak at the hearing must submit outlines of their comments by Thursday, March 17, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (IA–60–93), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be delivered to: CC:DOM:CORP:T:R (IA–60–93), Internal Revenue Service, room 5228, 1111 Constitution Avenue NW, Washington DC 20224. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Mike Slaughter,

Regulations Unit at 202–622–7190; concerning the regulations, James M. Guiry, 202–622–1585. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** add § 1.162–20T to the Income Tax Regulations. The final regulations that will result from the regulations proposed in this notice will be based on the text of the temporary regulations and will provide rules under section 162 of the Internal Revenue Code (Code) as amended by section 13222 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993) (107 Stat. 477). These rules relate to the deductibility of dues or other similar amounts paid by a taxpayer to certain tax-exempt organizations if the taxpayer paying dues receives from the organization a notice described in section 6033(e)(1)(a)(ii). The text of the temporary regulations is published elsewhere in this issue of the **Federal Register**. The preamble to the temporary regulations contains a full explanation of the reasons underlying the issuance of the proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, April 7, 1994, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restriction, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of § 601.601(a)(3) apply to the public hearing.

Persons that have submitted written comments by February 25, 1994, and want to present oral comments at the hearing must submit by Thursday, March 17, 1994, an outline of the topics to be discussed and the time to be devoted to each topic. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is James M. Guiry, Office of Assistant Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.162–20 is amended by removing and reserving paragraph (b) and adding paragraph (d). The additions read as follows:

§ 1.162–20 Expenditures attributable to lobbying, political campaigns, attempts to influence legislation, etc. and certain advertising.

* * * * *

(b) [Reserved]

* * * * *

(d) [The text of this paragraph, as proposed, is the same as the text of the temporary regulations published elsewhere in this issue of the **Federal Register**].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93–31403 Filed 12–23–93; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 1

[IA–38–93]

RIN 1545–AR69

TeleFile Voice Signature Test

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the IRS is amending temporary regulations to provide that an individual Federal income tax return completed as part of the TeleFile Voice Signature test after January 12, 1994, and before April 16, 1994, will be treated as a return that is signed, authenticated, verified, and filed by the taxpayer as required by the Internal Revenue Code. The temporary regulations, as amended, affect those taxpayers who are eligible to, and elect to, file their individual Federal income tax returns for the 1993 calendar year by telephone under the test. The amendments are needed to implement the test for the 1994 filing season. The text of the temporary regulations, as amended, also serves as the comment document for this notice of proposed rulemaking.

DATES: Comments and requests for a public hearing must be received by May 15, 1994.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R (IA–38–93), room 5228, Washington, DC 20044. In the alternative, comments and requests may be hand delivered to: CC:DOM:CORP:T:R (IA–38–93), room 5228, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Celia Gabrysh (202) 622–4940 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC

20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer PC:FP, Washington, DC 20224.

The collection of information in these regulations is contained in §§ 1.6012–7T and 1.6061–2T. This information is required by the IRS to implement the TeleFile Voice Signature test. The respondents are those eligible individual taxpayers who choose to file their Federal income tax returns under the test.

The following estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the IRS. Individual respondents may require more or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 8,867 hours.

The estimated annual burden per respondent varies from 5 minutes to 9 minutes, depending on individual circumstances, with an estimated average of 7 minutes.

Estimated number of respondents: 76,000.

Estimated annual frequency of responses: Once.

Background

The temporary regulations published elsewhere in this issue of the **Federal Register** amend temporary regulations §§ 1.6012–7T, 1.6061–2T, and 1.6065–2T. The final regulations that will result from the regulations proposed in this notice would be based on the text of the temporary regulations. The final regulations would provide that an individual Federal income tax return completed as part of the TeleFile Voice Signature test will be treated as a return that is signed, authenticated, verified, and filed by the taxpayer as required by the Internal Revenue Code. For the text of the proposed regulations, see the temporary regulations published elsewhere in this issue of the **Federal Register**. The preamble to the temporary regulations contains a full explanation of the reasons underlying the issuance of the proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably an original and eight copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be held upon written request to the Commissioner of Internal Revenue by any person who also submits timely written comments. If a public hearing is held, notice of the time and place and date will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Celia Gabrysh of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Sections 1.6012–7, 1.6061–2 and 1.6065–2 are added to read as follows:

§ 1.6012–7 Telephone return filing using voice signature.

[The text of this proposed section is the same as the text of § 1.6012–7T published elsewhere in this issue of the **Federal Register**].

§ 1.6061–2 Signing of returns by voice signature.

[The text of this proposed section is the same as the text of § 1.6061–2T published elsewhere in this issue of the **Federal Register**].

§ 1.6065–2 Verification of returns by voice signature.

[The text of this proposed section is the same as the text of § 1.6065–2T published elsewhere in this issue of the **Federal Register**].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93–31408 Filed 12–23–93; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Parts 1 and 602

[IA–62–93]

RIN 1545–AS14

Certain Elections Under the Omnibus Budget Reconciliation Act of 1993

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the time and manner of making certain elections under the Omnibus Budget Reconciliation Act of 1993. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be received by February 25, 1994.

ADDRESSES: Send written comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (IA–62–93), Room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: George Bradley, 202–622–8104 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, ATTN: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer PC:FP, Washington, DC 20224.

The collections of information in this notice of proposed rulemaking are in

§§ 1.108(c)–1T, 1.163(d)–1T, 1.1044(a)–1T, and 1.6655(e)–1T. This information is required by the Internal Revenue Service to assist taxpayers who make certain elections that were enacted as part of the Omnibus Budget Reconciliation Act of 1993. This information will be used to process the tax returns of electing taxpayers in accordance with the provisions of the elections. The likely respondents are: individuals or households, farms, business or other for-profit institutions, and small businesses or organizations.

These estimates are approximations of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances. Estimated total annual reporting burden: 202,500 hours. The estimated annual burden per respondent varies from 15 minutes to 45 minutes, depending on individual circumstances and the particular election involved, with an estimated average of 30 minutes. Estimated number of respondents: 410,000. Estimated annual frequency of responses: once.

Background

The temporary regulations, T.D. 8509 in the Rules and Regulations portion of this issue of the **Federal Register** amend part 1 of title 26 of the Code of Federal Regulations. These amendments reflect certain election provisions contained in the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 312) and provide necessary guidance to the public on the time and manner for making these elections.

Special Analyses

It has been determined that these proposed regulations are not significant rules as defined in Executive Order 12866. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed rules, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations are being sent to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who also submits comments. If a hearing is scheduled, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is George Bradley, Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, other personnel from the Internal Revenue Service and the Treasury Department participated in their development.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93–31410 Filed 12–23–93; 8:45 am]

BILLING CODE 4830–01–P

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26 CFR Parts 1 and 602

[IA–63–93]

RIN 1545–AS21

Information Reporting for Discharges of Indebtedness

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the information reporting requirements of certain financial entities for discharges of indebtedness. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by February 25, 1994. Outlines of oral comments to be presented at the public hearing scheduled for March 30, 1994, at 10 a.m. must be received by March 9, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (IA–63–93), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be delivered to: CC:DOM:CORP:T:R (IA–63–93), room 5228, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Johnnel L. St. Germain (timing and amount of discharge) at (202) 622–4930 or Michael F. Schmit at (202) 622–4960, both of the Office of Assistant Chief Counsel (Income Tax and Accounting); concerning submissions and the hearing, Carol Savage of the Regulations Unit, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer PC:FP, Washington, DC 20224.

The collection of information in this regulation is in § 1.6050P–1. This information is required by the Internal Revenue Service to implement section 13252 of the Omnibus Budget Reconciliation Act of 1993. The information will be used to determine whether taxpayers have complied with the tax laws relating to discharges of indebtedness. The likely respondents are governmental and business institutions.

The collection of information in § 1.6050P–1 is satisfied by including the required information on Form 1099–C filed with the Service and on a statement furnished to the person whose indebtedness was discharged. The burden for this requirement is reflected in the burden estimates for Form 1099–C.

Background

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR parts 1 and 602) relating to section 6050P. The temporary regulations contain rules relating to the reporting requirements of certain financial entities for discharges of indebtedness.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed rules, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for March 30, 1993 at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of § 601.601(a)(3) apply to the hearing.

Persons that have submitted written comments by February 25, 1994, and want to present oral comments at the hearing must submit, by March 9, 1994, an outline of the topics to be discussed and the time to be devoted to each topic. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of the temporary regulations are Michael F. Schmit and Johnnel L. St. Germain of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.6050P–1 also issued under 26 U.S.C. 6050P. * * *

Par. 2. Sections 1.6050P–0 and 1.6050P–1 are added to read as follows:

§ 1.6050P–0 Table of contents.

[The text of this proposed section is the same as the text of § 1.6050P–0T published elsewhere in this issue of the **Federal Register**.]

§ 1.6050P–1 Information reporting for discharges of indebtedness by certain financial entities.

[The text of this proposed section is the same as the text of § 1.6050P–1T published elsewhere in this issue of the **Federal Register**.]

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93–31309 Filed 12–23–93; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Parts 47 and 48

[PS–76–93]

RIN 1545–AS32

Amendments to the Fuel Floor Stocks Taxes Regulations and the Diesel Fuel Excise Tax Regulations Under the Omnibus Budget Reconciliation Act of 1993

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations amending the temporary floor stocks taxes regulations (TD 8498) published in the **Federal Register** on November 29, 1993 (58 FR 62526) and the temporary diesel fuel excise tax regulations (TD 8496) published in the **Federal Register** on November 30, 1993. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by February 25, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (PS–76–93), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be delivered to: CC:DOM:CORP:R (PS–76–93), Internal Revenue Service, room 5228, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Edward Madden (202) 622–4537 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR parts 47 and 48. This document proposes regulations the text of which is the same as the text of those temporary regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing may be scheduled and held upon written request by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the

hearing will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Edward Madden, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Parts 47 and 48

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 47 and 48 are proposed to be amended as follows:

PART 47—FLOOR STOCKS TAXES

Paragraph 1. The authority citation for part 47 continues to read in part as follows:

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

Par. 2. Section 47.3–6, paragraph (a) is proposed to be amended by removing the language "Section" and adding in its place "Except as provided in § 47.3–7, section".

Par. 3. Section 47.3–7, paragraph (b) is revised to read as follows:

[The text of this proposed § 47.3–7(b) is the same as the text of the temporary regulations published elsewhere in this issue of the Federal Register.]

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 4. The authority citation for part 48 continues to read in part as follows:

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

Par. 5 Section 48.4082–1, paragraphs (b)(1) and (b)(2)(i) are proposed to be revised to read as follows:

[The text of this proposed § 48.4082–1(b)(1) and (b)(2)(i) the same as the text of the temporary regulations published elsewhere in this issue of the Federal Register.]

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93–31407 Filed 12–23–93; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2520 and 2530

Disclosure of Plan Information to Participants and Beneficiaries

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Request for information.

SUMMARY: This document requests information from the public concerning the summary plan description, summary annual report and individual benefit reporting and recordkeeping requirements of the Employee Retirement Income Security Act of 1974, as amended, (ERISA), and regulations issued thereunder. The information furnished in response to this document is intended to assist the Department of Labor (the Department) in evaluating the extent to which the current disclosure requirements serve to assure that participants and beneficiaries are provided with useful and timely information about their employee benefit plans and the extent to which the requirements should be updated to reflect statutory, technological and other changes affecting the disclosure of information to participants and beneficiaries. The furnished information also will assist the Department in developing regulatory and legislative proposals as may be necessary to address identified deficiencies relating to the various disclosure provisions.

DATES: Written comments should be received by the Department of Labor on or before February 25, 1994.

ADDRESSES: Comments (preferably, at least six copies) should be addressed to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, room N–5669, U.S. Department of Labor, Washington, DC 20210. Attenion: DISCLOSURE RFI. All comments received will be available for public inspection at the Public Disclosure Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Ave., NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Katherine D. Lewis, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 219–7901; or Cynthia Weglicki, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, telephone (202) 219–4592. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

A. General

With the enactment of the Employee Retirement Income Security Act of 1974 (ERISA) came a legislatively ordered array of disclosure requirements under Title I. These disclosures are intended to inform participants and beneficiaries of their rights and obligations under their plan, the financial condition of the plan, and whether the plan is being administered in accordance with the law.

The disclosure requirements under Title I of ERISA, in addition to providing for the availability to participants and beneficiaries of plan documents and other instruments pursuant to which their plan is established or operated,[1] require that specific information relative to an employee benefit plan be furnished to each participant and each beneficiary receiving benefits under the plan. These disclosures include: Summary plan descriptions (SPDs), as well as summaries of material plan changes and periodic updates of the SPD (sections 102(a)(1) and 104(b)(1)); summary annual reports (section 104(b)(3)); and, in the case of pension plans, individual benefit statements describing the participant's accrued and vested benefits (sections 105 and 209).[2]

Since ERISA's enactment and the adoption of many of the Department's regulations governing ERISA's disclosure requirements, there have been a number of changes to the statute (e.g., the addition of provisions governing continuation of health care coverage and qualified domestic relations orders, among others) and changes in the way plan information is prepared, maintained and communicated because of increased reliance on and utilization of computerized information systems. In addition, a number of questions have been raised with respect to whether participants and beneficiaries are being provided useful and timely information

[1] See sections 104(b)(2) and 104(b)(4).

[2] In addition, participants and beneficiaries are required to be furnished noticed of an employer's failure to make a payment required to meet the minimum funding standards under section 302 if the employer fails to make the required payment within 60 days of the due date for such payment (section 101(d)). Participants and beneficiaries also are required to be furnished notices of an employer's filing of an application for a funding waiver (section 303(e)), of a qualified transfer of excess pension assets to a health benefit account (section 101(e)), and of amendments to certain pension plans to significantly reduce the rate of future benefit accrual (section 204(h)).

concerning the plans in which they participate. For these reasons, the Department believes that it is appropriate to undertake a comprehensive review of the current disclosure framework in an effort to identify areas in which modifications to regulatory or statutory requirements would serve to assure the disclosure of useful and timely information to participants and beneficiaries, as well as to eliminate any unnecessary administrative burdens and costs attendant to the providing of such information.

As an initial step in the review process, the Department is inviting plan sponsors, administrators, fiduciaries, participants, beneficiaries, service providers and other interested persons to submit comments and views concerning the adequacy of the current statutory and regulatory disclosure scheme, recommendations for changes, and information and data relating to compliance costs (or cost savings) applicable to either the current scheme or recommended changes thereto. It is intended that the information provided will assist the Department in identifying areas for change and in developing proposals as may be necessary to address identified deficiencies relating to the various disclosure provisions.

Set forth below is a brief discussion of the summary plan description, summary annual report, and individual benefit reporting requirements of ERISA and related regulations.[3] Following the discussion of each requirement are a number of questions with respect to which the Department would like to receive comments, views, information and data. The questions are provided for guidance purposes only and are not intended to restrict or otherwise limit the scope of public comment on the subject disclosure provisions. To facilitate the processing and review of comments, however, commentators are requested to identify the requirement to which each of their comments relates (e.g., SPD requirements or summary annual report requirements or benefit statement requirements) and, as appropriate, the number of the question being addressed. Commentators also are requested to provide as much quantitative and qualitative information as possible concerning costs, administrative burdens, savings, and benefits attributable to compliance with the current disclosure framework and any recommended changes thereto.

[3] It should be noted that a number of exemptions and alternative methods of compliance relating to the disclosure requirements have been prescribed by regulations issued by the Department (See 29 CFR § 2520.104–20; 2520.104–21; 2520.104–22; 2520.104–23; 2520.104–24; 2520.104–26; 2520.104–27; 2540.104–48; and 2520.104–49). Although specific exemptions and alternative methods of compliance are not discussed herein, public comments on these regulations will be considered by the Department.

B. Summary Plan Descriptions

Background

In general, sections 102(a) and 104(b)(1) of ERISA provide that the administrator of an employee benefit plan shall furnish to each participant, and beneficiary receiving benefits under the plan, a summary plan description (SPD). The SPD is required to be written in a manner calculated to be understood by the average plan participant and is required to be sufficiently accurate and comprehensive to reasonably apprise participants and beneficiaries of their rights and obligations under the plan. (See section 102(a)(1) and 29 CFR 2520.102–2.)

The specific information required to be contained in the SPD is described in section 102(b) and 29 CFR 2520.102–3. Among other things, SPDs are required to contain: The name and type of administration of the plan; the name and address of the person designated as agent for service of legal process; a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits; a description of the provisions concerning for nonforfeitable pension benefits; circumstances which may result in disqualification, ineligibility or denial or loss of benefits; the sources of financing for the plan; the procedures to be followed in presenting claims for benefits and the remedies available under the plan for the redress of claims which are denied in whole in part; information concerning whether the plan, if a pension plan, is insured under Title IV and, if so, information concerning coverage provided by the Pension Benefit Guaranty Corporation (See model language at § 2520.102–3(m)(3).); and a statement of ERISA rights, which is intended to provide participants and beneficiaries with a brief description of their rights and remedies under ERISA. (See model statement at § 2520.102–3(t)(2).)

Purusant to section 104(b)(1) and 29 CFR § 2520.104b–2, the SPD is required to be furnished to a participant within 90 days after becoming a participant or, in the case of beneficiaries, within 90 days after first receiving benefits; or, if later, within 120 days after the plan becomes subject to Part I of title I of ERISA. If there is a material modification in the terms of the plan or a change in the information required to be contained in the SPD, administrators are required to furnish participants and beneficiaries with a summary of such modifications or changes (often referred to as a summary of material modifications or "SMM") within 210 days following the end of the plan year in which the modification or change is adopted. (See 29 CFR 2520.104b–3 and 2520.104b–4 relating to the furnishing of SMMs.)

Section 104(b)(1) also requires that participants and beneficiaries be periodically furnished updated SPDs which integrate all plan amendments during the applicable period. Under section 104(b)(1) and § 2520.104B–2(b), participants and beneficiaries are required to be provided updated SPDs every fifth year if there have been changes in the information required to be disclosed in the SPD during the applicable five year period. If there have been no changes during the five year period, a new SPD must be furnished within ten years.

Request for Information

1. What, if any, additional information should be required to be disclosed in the SPD? For example, to what extent should the SPD be required to contain information relating to procedures and notice requirements applicable to domestic relations and child medical support orders? (See section 206(d)(3) and section 609.)

2. Is guidance necessary with respect to the extent to which information relating to the continuation of coverage provisions of Part 6 of Title I should be included in the SPD? The Department notes that section 606(a)(1) requires administrators of group health plans to provide written notice of the rights provided under Part 6 to each covered employee and spouse of the employee, at the time of commencement of coverage under the plan.

3. What currently required information, if any, should be eliminated from the SPD and why?

4. Within what period of time following plan changes should summaries of those changes be required to be furnished to participants and beneficiaries? Should welfare plan changes be required to be furnished within a shorter period of time than pension plan changes? Within what period do plans generally furnish participants and beneficiaries with copies of (a) changes to pension plans, and (b) changes to welfare plans?

5. How frequently should SPDs be required to be updated? Should the frequency with which updated SPDs are furnished be determined by the number of plan changes since the last SPD? (For

example, should an updated SPD be required to be furnished after four plan amendments?) Are SPDs currently updated more frequently than every five years? If so, what factors are considered and how frequently are updated SPDs generally provided?

6. What, if any, alternative means for furnishing SPDs, updated SPDS or SPD information to participants and beneficiaries should be considered? Describe the benefits and costs attendant to such alternative(s), as compared with compliance with current requirements. (See also general requirements applicable to the furnishing of documents under Part 1 of Title I set forth in 29 CFR 2520.104b–1.)

C. Summary Annual Reports

Background

Section 104(b)(3) provides that within 210 days following the close of a plan's fiscal year, the administrator shall furnish to each participant and to each beneficiary receiving benefits under the plan, a copy of the statements and schedules concerning plan assets and liabilities and receipts and disbursements (described in sections 103(b)(3)(A) and (B)) for such fiscal year, and such other material (including the percentage determined under section 103(d)(11))[4] as is necessary to fairly summarize the latest annual report. This annual disclosure is commonly referred to as the summary annual report or SAR.[5]

Pursuant to 29 CFR 2520.104b–10, governing the furnishing of the SAR, SARs must be distributed within nine months after the close of a plan year, or within two months after the close of a period for which an extension for filing the plan's annual report has been granted by the Internal Revenue Service, rather than 210 days after the close of a plan year as provided in the statute. The regulation also describes the information required to be contained in the SAR and prescribes formats for the disclosure of that information. The formats prescribed by the regulation are intended to permit the entry of SAR information directly from specific line items of the plan's annual report. The regulation also sets forth special rules for small plans filing the Form 5500–R.

Because the Form 5500–R is essentially a notice-type statement, containing no financial information, the regulations permit small plans, for those years for which a Form 5500–R is filed, to satisfy their SAR obligation either by furnishing participants and beneficiaries with a copy of the Form 5500–R, along with a required notice (See § 2520.104b–10(b)(3).), or by notifying participants and beneficiaries that they will be furnished a copy of the Form 5500–R, free-of-charge, upon request.[6]

All other plans must use the prescribed formats for the furnishing of SAR information. The regulations contain different informational requirements for pension plans and welfare plans. (See § 2520.104b–10(d)(3) and (4), respectively.)

In brief, the SAR for a pension plan is require to contain the following information: the type of funding arrangement (trust, insurance, etc.); the amount of plan expenses; the amount of administrative expenses; the amount of benefits paid; the total number of participants and beneficiaries as of the end of the plan year; the value of plan assets, after subtracting liabilities, at the beginning of the year and at the end of the year; an indication of whether there was an increase or decrease in net assets and the amount of such increase or decrease; the total amount of income, with a showing of the amount of income constituting employer contributions, the amount of participant contributions, the amount of gain or loss from the sale of assets, the amount of earnings from investments; and certain insurance information for plans utilizing allocated insurance contracts. Defined benefit pension plans are also required to include the plan actuary's statement that enough (or not enough) money was contributed to keep the plan funded in accordance with the minimum funding standard, as well as the amount of the deficit, if any. Defined contribution plans are required to include similar information in their SARs.

The information required to disclosed in a welfare plan SAR varies, generally depending on whether the plan pays benefits through a fund or insurance contracts. In the case of a welfare plan which pays benefits through a fund, the SAR is required to contain much of the same financial information required to be included in the SAR of a pension plan. If any benefits are provided on an uninsured basis, the SAR must so indicate. If a welfare plan purchases insurance, the SAR must include: The name of the insurer(s); the types of claims covered by the insurance; the total amount of premiums paid; a statement relating to experience-rated contracts (if applicable), the premiums paid for such contracts and the amount of benefits paid under such contracts during the plan year.

All SARs are required to contain a statement describing the rights of participants and beneficiaries to receive a copy of the full annual report, or any part thereof.

Request for Information

7. What, if any, additional information should be required to be disclosed in the SAR? For example—

a. Should the SAR be required to disclose: whether the plan was audited by an independent qualified public accountant; whether the accountant issued a "qualified" or "adverse" opinion or a disclaimer in connection with the opinion, and, if so, the reason(s) for the qualified or adverse opinion, or disclaimer; any errors and irregularities, illegal acts or material internal control deficiencies identified by the accountant; any events subsequent to year end, identified by the account, which would affect the plan's financial condition?

b. Should the SAR of a defined benefit pension plan be required to disclose: The benefit obligations of the plan; detailed information concerning the funding status of the plan and, if underfunded, by how much (currently, only plans with assets which are less than 70 percent of the plan's liabilities are required to disclose such information); information about PBGC coverage and the maximum benefits payable by the PBGC; whether the sponsor has applied for or been granted a funding waiver during the plan year; whether the employer has failed to make a required installment or other payment required to meet the minimum funding standards during the plan year?

8. Is there any information which should be deleted from the SAR?

9. Within what period following the end of the plan year should SARs be required to be furnished to participants and beneficiaries?

[4] Section 103(d)(11) requires that the actuarial statement, which is required to accompany the annual report of certain pension plans, include the percentage of assets to liabilities if the current value of the assets is less than 70 percent of the current liability under the plan.

[5] Related statutory requirements include section 104(b)(2), which requires that the latest annual report be made available for examination by any participant or beneficiary, and section 104(b)(4), which requires that a copy of the latest annual report be furnished to any participant or beneficiary, upon receipt of a written request. Section 104(b)(4) also permits the administrator to make a reasonable charge to cover the cost of furnishing such complete copies. See also 29 CFR 2520.104b–30 governing charges for documents.

[6] Pursuant to § 2520.104b–10(b)(2), administrators may notify participants of the availability of the Form 5500–R by posting the required notice at worksite locations for a period of not less than 30 days. However, certain participants, such as retirees, beneficiaries, participants who have separated with vested benefits, and others not reasonably expected to visit worksite locations where the notice is posted, are required to be furnished notice on an individual basis.

10. Are there any events affecting the financial condition of a plan which should be communicated to participants and beneficiaries prior to the end of the plan year (e.g., a failure of the sponsor to make required contributions, insufficient assets to make benefit or premium payments)? What events should necessitate disclosure? Within what period should disclosure of such events be required?

11. What, if any, alternatives means for furnishing SARs should be considered? Describe the benefits and costs attendant to such alternative(s), as compared with compliance with the current requirements. (Also see general requirements applicable to furnishing documents under Part 1 of Title I set forth in 29 CFR 2520.104b–1.)

D. Individual Benefit Reporting and Recordkeeping

Background

Section 105(a) of ERISA generally requires each administrator of an employee pension benefit plan to furnish to any participant or beneficiary, who so requests in writing, a statement indicating, on the basis of the latest available information, the total benefits accrued and the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which such benefits will become nonforfeitable. Similarly, section 209(a)(1) of ERISA generally requires the plan administrator of a pension plan subject to Part 2 of title I of the Act to make a report, in accordance with regulations of the Secretary of Labor, to each employee who is a participant under the plan and who requests such report. The report required under section 209(a)(1) must be sufficient to inform the employee of his or her accrued benefits which are nonforfeitable. Under both sections 105(a) and 209(a)(1), no participant is entitled to more than one report on request during any single 12-month period. Section 209(a) also requires similar reports to be provided to a participant who terminates service with the employer or has a one-year break in service. Sections 105(d) and 209(a)(2) authorize the Secretary of Labor to prescribe regulations specifying the extent to which these reporting requirements apply to plans adopted by more than one employer.

In addition, section 105(c) requires plan administrators to provide to participants with respect to whom registration statements are filed with the Internal Revenue Service under section 6057 of the Internal Revenue Code of 1986 (the Code) individual benefit statements setting forth the information contained in the registration statements. This statement also is required to include a notice to participants of any benefits which are forfeitable if the participant dies before a certain date.

Section 209 also establishes certain recordkeeping requirements relating to benefit reporting. In general, section 209(a)(1) requires records to be maintained by employers and authorizes the Secretary of Labor to prescribe regulations governing such records. The information necessary for individual benefit reporting is to be furnished by the employer to the plan administrator. In the case of a plan adopted by more than one employer, however, section 209(a)(2) requires records to be maintained by the plan administrator, based on information to be provided by each such employer.

Section 209(b) provides that if any person required under section 209(a) to furnish information or maintain records for any plan year fails to comply with such requirements, such person shall pay to the Secretary a civil penalty of $10 for each employee with respect to whom such failure occurs, unless it is shown that the failure was due to reasonable cause.

The Department last proposed regulations governing the individual benefit reporting and recordkeeping requirements under sections 105 and 209 in 1980. At that time, separate regulations were proposed for single employer plans and multiple employer plans. (See 45 FR 51231, August 1, 1980, and 45 FR 52824, August 8, 1980, respectively.) The Department anticipates withdrawing the 1980 proposed regulations and publishing revised proposed benefit reporting regulations or developing statutory amendments which take into account the information furnished in response to this document.

Request for Information

Furnishing Benefit Statements

12. Should participants and beneficiaries be limited to one benefit statement request per 12 month period? If not, how frequently should participants and beneficiaries be permitted to request such information?

13. Are there classes of participants or beneficiaries with respect to whom benefit statements should not be required to be furnished every 12 months (e.g., participants and beneficiaries who are currently receiving benefits, participants and beneficiaries to whom annuities have been distributed, non-vested participants who have terminated service with sponsoring employers)?

14. Should plans be permitted to condition the furnishing of benefit statements on a participant's compliance with reasonable plan procedures? If so, what are reasonable procedures?

15. What information, if any, should plans be permitted to require from participants and beneficiaries as a condition to furnishing a benefit statement?

16. Within what period of time following receipt of a benefit statement request should plans be required to furnish the requested statement?

17. Under what circumstances, if any, should plans furnishing annual benefit statements to all participants be relieved from the obligation to respond to individual benefit statement requests?

18. Should there be a requirement that a benefit statement be furnished automatically upon a termination of service or a one-year break in service to all participants, including participants with no vested benefits?

19. Within what period of time following a termination in service or break in service should plans be required to furnish benefit statements?

20. What methods of delivering benefit statements or benefit statement information should be permitted? Possible methods of delivery might include first class mail, personal delivery, interoffice mail, or access to benefit information via computer terminals. What methods are currently being utilized for communicating individual benefit information to participants and beneficiaries?

Content of the Benefit Statement

21. Section 105(a) requires the furnishing of benefit statements based on the "latest available information." How should "latest available information" be defined or determined for purposes of furnishing benefit statements in response to a request, upon termination of service, upon incurring a break in service, and in situations where benefit statements are furnished annually?

22. What information should be required to be contained in an individual benefit statement? For example, should benefit statements be required to set forth: Both the percentage and amount of vested accrued benefits; the earliest date on which benefits will become partially or fully vested; the amount of participant contributions; the portion of the accrued benefit derived from employer contributions and from participant contributions; the amount of any Social Security offset; projected early and normal retirement benefits; projected

early and normal retirement benefits stated in the form of a joint and survivor annuity; descriptions of the projections and assumptions on which the benefit statement is based, or the date of the information on which the benefit statement is based.

23. What variations, if any, in the information required to be contained in benefit statements should be considered for insurance contract plans (as described in section 301(b) of ERISA and section 412(i) of the Code); individual account plans; employer stock plans; and class-year plans?

24. What information should be required to be furnished participants with no vested benefits?

25. Should benefit statements for underfunded plans be required to include information concerning the funding status of the plan and the benefit coverage limits of the Pension Benefit Guaranty Corporation?

Recordkeeping

26. What methods of record retention should be permitted for individual benefit information?

27. How long should individual benefit information be required to be retained?

28. In the case of multiple employer plans, what reporting requirements should be imposed on employers with respect to the furnishing of individual benefit information to the plan administrator?

29. Identify and explain any individual benefit recordkeeping problems which are unique to multiple employer plans. How should these problems be addressed?

All submitted comments will be made a part of the record of proceeding referred to herein and will be available for public inspection.

Signed at Washington, DC this 17th day of December, 1993.

Olena Berg,

Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–4817–9]

Regulation of Fuels and Fuel Additives: Renewable Oxygenate Requirement for Reformulated Gasoline

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal concerns a program to maximize the energy and other benefits from the reformulated gasoline program, while obtaining significant emission reductions in ozone forming volatile organic compounds and toxic air pollutants. Specifically, the program would require that 30 percent of the oxygen content of reformulated gasoline come from renewable oxygenates. Technical analyses show that the production of such oxygenates is more energy efficient than that of other potential oxygenated additives and the use of such oxygenates would offset the use of imported crude with fuels produced from corn, grain, wood, and even organic waste. As a result, the program would reduce foreign oil imports, create investment and jobs in America, reduce fossil energy use, and lower emissions of harmful greenhouse gases. This proposal also contains a description of the proposed enforcement mechanisms associated with this requirement.

DATES: The comment period will close on February 14, 1994. EPA will hold a public hearing on this proposal on January 14, 1994, in the Washington, DC area beginning at 9 a.m.

ADDRESSES: Send comments to Public Docket A–93–49 at the address below. Materials relevant to this NPRM are contained in Public Dockets A–91–02, A–92–12, and A–93–49 located at room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials. The public hearing will be held at the Hyatt Regency, Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202. Telephone: 703–418–1234.

FOR FURTHER INFORMATION CONTACT:

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To request copies of this action contact: Delores Frank, Regulation Development and Support Division, U.S. EPA (RDSD–12), 2565 Plymouth Road, Ann Arbor, MI 48105, telephone: (313) 668–4295.

SUPPLEMENTARY INFORMATION:

Background

The federal reformulated gasoline program is designed to improve air quality by reducing motor vehicle emissions of toxic and tropospheric ozone-forming compounds, as prescribed by section 211(k) of the Clean Air Act as amended (CAA or the Act). The Act mandates certain requirements for the reformulated gasoline program. Section 211(k)(2) requires a minimum content of 2.0 weight percent oxygen and maximum content of 1.0 volume percent benzene and Section 211(k)(3) sets minimum performance standards for emission reductions of ozone forming volatile organic compounds (VOC) and air toxics. In addition, Section 211(k)(1) directs EPA to promulgate regulations establishing requirements for reformulated gasoline, and that such regulations require the greatest reductions in VOC and toxics emissions, taking into consideration the cost of achieving such emission reductions, non-air-quality and other air-quality related health and environmental impacts and energy requirements. To obtain the benefits described below from this proposal, and to make sure these emission standards are met in such a way as to properly reflect these statutory criteria, today's action proposes a year-round requirement that thirty percent of the statutory oxygen compositional specifications for reformulated gasoline be obtained from renewable oxygenates. To ensure that the ozone benefits of the reformulated gasoline program are unaffected by today's proposal, it is EPA's expectation that only renewable oxygenates that do not exhibit volatility related commingling effects when mixed with gasoline (e.g. ETBE) will be acceptable during the VOC control period (summer months) to comply with the requirements being proposed today. Both ETBE and ethanol are expected to be acceptable during the non summer months. Also included in today's proposal are provisions for averaging and credit trading in order to provide maximum flexibility for refiners and fuel importers.

There is considerable history behind EPA's decision to propose a renewable oxygenate requirement. In response to EPA's April 1992 publication of the Supplemental Notice of Proposed Rulemaking (SNPRM) (57 FR 13416, April 16, 1992) for reformulated gasoline, members of the ethanol industry submitted comments to EPA which expressed their concern that the proposed reformulated gasoline

rulemaking, would effectively exclude ethanol from the reformulated gasoline market. In an attempt to address the role of ethanol, the Agency proposed a renewable oxygenate program (ROP) (58 FR 11722, February 26, 1993) at the direction of former President Bush to promote the use of ethanol and other renewable oxygenates in reformulated gasoline. The objective of the ROP was to promote the use of renewable oxygenates in the reformulated gasoline program in the summer while, theoretically, maintaining the overall environmental benefits of the program.

As explained in the preamble and RIA for the reformulated gasoline final rule, EPA had a number of concerns with respect to the ROP proposal, and decided not to promulgate the ROP. The ROP proposal created an increase for the use of renewables but in no way assured their use. Also, EPA's analysis indicated that the proposal would not maintain the environmental benefits instead VOC emissions would increase significantly under such a proposal. The commingling effect of mixing ethanol blends with non-ethanol blends in consumers' fuel tanks, the effect of ethanol on the distillation curve of the blend, and unrestricted early use of the complex model would have sacrificed 40 to 50 percent of the VOC control that is required under section 211(k)(3) for reformulated gasoline during the summer.

The final rulemaking for reformulated gasoline, consistent with the agreement reached through regulatory negotiation, does not include additional provisions to promote the use of renewable oxygenates. Therefore, uncertainty remains regarding the magnitude of the role renewable oxygenates will play in reformulated gasoline.

EPA believes a number of arguments support a program to ensure a minimum level of participation of renewable oxygenates in reformulated gasoline. The U.S. now imports nearly half of the oil we use. Half of our trade deficit is from imported oil, and it is getting worse. Since 1972 we have spent 1.3 trillion dollars on imported oil—money which could have provided investment and jobs in America. Growing oil consumption not only diminishes a limited primary energy source but also increases emissions of greenhouse gases. Expanding the use of renewable fuels, such as ethanol, from resources such as corn, grain, wood, organic waste products, and even garbage can help clean up our air, cut dependence on foreign oil, create investment and jobs in America, reduce primary energy use by 20% or more as compared to nonrenewable oxygenates, and lower emissions of harmful greenhouse gases.

Today's proposal is intended to address the role of renewable oxygenates in reformulated gasoline by introducing a program to increase the use of such oxygenates in a manner that ensures environmental, energy, and economic benefits. As just summarized, EPA believes there are significant benefits for renewable oxygenate use in reformulated gasoline, and today's proposal is based on EPA's general authority in Section 211 (k)(1) to establish requirements for RFG and the directive in section 211(k)(1) to consider such environmental, energy, and economic benefits in structuring the emission reduction requirements for the reformulated gasoline program. Today, the United States imports nearly half of all oil used, with two-thirds of this oil being used for transportation. Dependence on imported oil costs the U.S. $40–80 billion each year, and the cumulative cost over the last 20 years has reached $1.3 trillion (in current dollars). Payments for imported oil are the largest single cause of the U.S. international trade deficit, a deficit which reached $84 billion in 1992 and is expected to exceed $100 billion in 1993. Payments for imported oil represent a transfer of wealth from the United States to oil-exporting countries. Absent policies to reverse current trends, projected U.S. dependence on imported oil will increase to 60–70% by the year 2010.

Money now spent on imported oil or oxygenates could instead be spent for renewable fuels made from feed stocks currently grown or processed in the United States. This would keep capital in the U.S., provide domestic jobs, strengthen our national security, and support a wide variety of American agricultural and fuel industries. Economists have estimated that 25,000 to 30,000 jobs are lost for every billion dollars which is sent abroad to pay for imports. To the extent that the renewable component of the reformulated gasoline program keeps American money in the country, it will keep American jobs here as well. Assuming that the renewable component is met with ETBE in the summer months and ethanol during the rest of the year, and also assuming this 30% renewable component displaces imports for foreign oxygenates, the program will create and sustain in excess of 10,000 new domestic jobs. As discussed below, reformulated gasoline made with renewable oxygenates requires the use of less imported crude oil and less energy.

In addition, EPA believes there is a justification for a renewable oxygenate program based on environmental benefits from renewable fuels. There is growing concern about greenhouse gas emissions, particularly from fossil fuels; in fact, the Climate Change Action Plan identified transportation as the sector with the greatest potential for growth in greenhouse emissions. The number of vehicle miles traveled in the United States has doubled over the last twenty years and is expected to continue to grow at a rapid rate. Expanding the use of renewable fuels from feed stocks such as corn, grain, wood, organic waste products, and even garbage, can potentially yield large reductions in the emissions of greenhouse gases. Today's proposal is consistent with current national efforts to stabilize greenhouse gas emissions by the year 2000. EPA believes that the use of renewable fuels also reduces consumption of primary energy sources such as petroleum and natural gas.

The Agency believes that the 30 percent requirement for renewable oxygenates is an appropriate level. This requirement ensures that renewables will not be excluded from the market, yet it allows the remaining 70 percent of the market to be open to all fuels, regardless of point of origin or renewable content.

As a result of concerns with the February 26, 1993 ROP, other options considered for simplifying that proposal, and other alternatives recommended by commenters, EPA has rejected them and is instead proposing today's renewable oxygenate program. (The reader is referred to Section II of the Preamble and Section I of the RIA for the reformulated gasoline final rulemaking for a description of the options and alternatives to the ROP considered.) Today's proposal is for a program to be applied in conjunction with the reformulated gasoline program and is designed to supplement the agreement for reformulated gasoline reached through regulatory negotiation. It does not alter the performance standards or other provisions for the reformulated gasoline outlined in the final rulemaking for reformulated gasoline. In addition, the program does not mandate the use of any particular oxygenate, but rather ensures some use of a certain subset of oxygenates.

The reader is referred to the technical support document contained in the docket for additional discussion of today's proposal. The reader may also refer to the 1993 NPRM (58 FR 11722, February 26, 1993), the Final Rule, the February 1993 Draft Regulatory Impact Analysis (DRIA), the Final Regulatory

Impact Analysis (RIA), and Public Dockets A–91–02 and A–92–12 for a thorough description of the goals and regulatory development of the reformulated program as it relates to today's action.

The remainder of this preamble is organized into the following sections:

II. Renewable Oxygenate Proposal for Reformulated Gasoline
III. Enforcement of the Renewable Oxygenate Requirement
IV. Federal Preemption
V. Environmental, Energy, and Economic Impacts
VI. Public Participation
VII. Compliance with Regulatory Flexibility Act
VIII. Statutory Authority
IX. Administrative Designation and Regulatory Analysis
X. Compliance with the Paperwork Reduction Act

II. Renewable Oxygenate Proposal for Reformulated Gasoline

A. Description of the Proposed Program

Reformulated gasoline is required to contain 2.0 weight percent oxygen (Section 211(k)(2)(B) of the CAA). A number of oxygenates have or are currently being used in gasoline, such as methyl tertiary butyl ether (MTBE), ethanol, ethyl tertiary butyl ether (ETBE), tertiary butyl alcohol and tertiary amyl methyl ether (TAME). All of these oxygenates involve the use of alcohols in their production, and most involve methanol or ethanol. Based on a study conducted by the Department of Energy (DOE) (submitted to EPA as a comment on the ROP proposed on February 26, 1993) and EPA's own analysis, all oxygenates reduce the amount of crude oil needed to produce gasoline on essentially a gallon per gallon basis (i.e., each gallon of oxygenate used saves a gallon of crude oil). The lack of incremental supply of domestic crude means that essentially all of this crude oil savings applies to crude oil imports, with important energy, national security, and balance of trade impacts. Of all the oxygenates evaluated, ETBE shows the greatest crude oil savings at 13 percent per gallon of reformulated gasoline, since it must be used at the greatest volume percentage to meet the minimum oxygen content. However, the DOE study implicitly assumed that all oxygenates would be produced domestically. While the use of imported oxygenates would still reduce crude oil use and oil imports, it would merely substitute importing one form of energy for another. In fact, importing oxygenates worsen the current situation from an economic point of view. The new imports would be high value products involving a significant amount of processing and labor in their production, but which can then be added directly to gasoline. The supplanted imported crude is a more basic energy source and requires processing and labor prior to its use. Therefore, only an increase in the use of domestic oxygenates would reduce both the amount of crude oil and oxygenate imports to the U.S.

This broader evaluation of basic energy requirements is important in interpreting the study's results regarding ethanol. The DOE study shows that crude oil use increases slightly with the use of renewable ethanol blends relative to domestic MTBE blends. However, as mentioned above, this ignores the importation of both methanol and MTBE. It also assumes that all of the butanes required to produce MTBE come from natural gas, while in practice as much as a third of the incremental MTBE is expected to use refinery (i.e., crude oil) based isobutylene. Consideration of this refinery-based isobutylene would eliminate any benefit of MTBE blends over ethanol blends. Also, the use of domestic, renewable ethanol would clearly reduce high value energy imports relative to imported methanol or MTBE.

A second aspect of the energy impact of the reformulated gasoline program is the total amount of fossil energy needed to produce reformulated gasoline with the various oxygenates. Total fossil energy is important because it tends to correlate with total carbon dioxide (CO_2) emissions and global warming impact. The DOE study shows that the ethers made from renewable alcohols (in this case corn based ethanol) can save nearly 15 percent of the total fossil energy per gallon of ether or about 1.6 percent of the total fossil energy needed per gallon of reformulated gasoline containing 2.0 weight percent oxygen, relative to using MTBE made from natural gas-based methanol (See Technical Support Document in the docket for derivation of the above figures).

The DOE study also shows that the blending of renewable ethanol also saves total fossil energy relative to natural gas based MTBE, if the increase in Reid vapor pressure (RVP) associated with ethanol need not be counteracted. However, the summer VOC emission performance standards require ethanol blends to generally have the same RVP as other blends, which requires the base gasoline to have a lower RVP than the base gasoline that can be blended with other oxygenates. The additional energy needed to lower the base gasoline RVP for ethanol blends is greater than the energy saved by producing ethanol instead of MTBE. Thus, while generating energy savings in the non summer months, ethanol used in summer reformulated gasoline would not be expected to produce an energy savings.

Furthermore, the use of ethanol directly in summer reformulated gasoline increases VOC emissions in two ways not reflected in either the simple or complex models. First, the commingling of ethanol and non-ethanol blends in vehicle fuel tanks causes an increase in RVP over and above the simple averaging of the fuels' RVPs, leading to a further increase in evaporative VOC emissions. Second, ethanol increases fuel evaporation at 130°F, a temperature typically reached in the vehicle fuel tank during summer driving, more than other oxygenates. While some of the non-commingling ethers also increase fuel evaporation at 130°F, the increase caused by ethanol is much greater. Based on an analysis contained in the Regulatory Impact Analysis (RIA) for the final rule implementing the reformulated gasoline program, the commingling and distillation effects could increase total VOC emissions by 5 percent (relative to MTBE blends) when ethanol blends comprise 30 percent of the market. Thus, it would not be appropriate to encourage ethanol (or other commingling alcohol) blends through the renewable oxygenate program during the summer high ozone season when the VOC emission performance standards apply. However, outside of the ozone season, when VOC reductions are not required in reformulated gasoline for ozone control, EPA believes domestic ethanol blends would produce both imported and total fossil energy savings and potential CO_2 emission reductions.

Both EPA and DOE analyses also show that methanol produced from biomass, such as wood or organic waste products, would save fossil energy relative to natural gas-based methanol and would require essentially no use of crude oil. (See Technical Support Document). This savings would occur with the direct use of methanol or through the production of methanol-based ethers. Again, if not encouraged for use during the high ozone season, the use of methanol should not raise VOC emission performance concerns (methanol, like ethanol, produces commingling related RVP increases and increases in fuel evaporation at 130°F).

Based on the above analysis, EPA believes that the use of renewable oxygenates would reduce the need for imported crude oil or oxygenates in the

production of reformulated gasoline. It is also clear that the use of renewable oxygenates, or at least the alcohol portion of the oxygenates, would reduce the total fossil energy needed to produce reformulated gasoline, and could provide greenhouse gas emission reductions. EPA therefore proposes to require that 30 percent of the required 2.0 weight percent oxygen content of all reformulated gasoline be produced using renewable oxygenates. This level of renewables should increase the crude oil, greenhouse gas emission, and domestic economic benefits of the program. The majority of the oxygenate projected to be used to produce reformulated gasoline absent this program is expected to be domestic ethers made from domestic methanol. Significant amounts of ethanol are also expected to be used, but primarily in the winter when the VOC emission requirements do not apply. However, significant amounts of ethers are also expected to be imported or domestically produced from imported methanol. The proposed 30 percent renewable requirement should have minimal impact on the domestic methanol-based ethers, since these ethers should have the lowest cost structure of all the oxygenates not qualifying under this requirement. In other words, the domestic methanol based ethers are expected to compose the majority of the 70 percent of reformulated gasoline not affected by the program. The proposed program should have the greatest impact on imported ethers and imported methanol, since their capacity would not likely be needed to fulfill the 70 percent of the reformulated gasoline market not required to be renewable. Supplanting this imported oxygenate supply would be domestic renewable alcohols (in the winter) and ethers produced from these alcohols (year round). The great majority of the renewable alcohol is expected to be domestic ethanol, since it is the only alcohol produced from renewables in any great quantity. However, EPA expects that this program could generate significant interest in domestic renewable methanol processes and over time both alcohols could be produced in significant quantities. Thus, the combination of domestic nonrenewable ethers and domestic renewable ethers and alcohols should provide a combination of reduced high value energy imports (with the attendant improvement in the nation's balance of trade and employment status) and a potential reduction in CO_2 emissions, while maintaining substantial competition between oxygenate sources to ensure competitive market pricing.

EPA is proposing to define renewable oxygenates to include all ethers if these ethers are produced from renewable ethanol or methanol. These ethers can be used anytime during the year. Renewable oxygenates are also proposed to include domestically produced renewable ethanol and methanol, but only if used during the non-high ozone season. Renewable ethanol and methanol are proposed to be methanol and ethanol produced from feed stocks other than petroleum, natural gas, coal, or peat. EPA is considering adopting a performance based requirement to ensure a net reduction in total fossil energy utilization of between 5 and 20% and net greenhouse gas emission reductions up to 20% associated with the production and use of renewable oxygenates. EPA requests comments on the above definitions, as well as on the desirability of a performance based definition and on the possible content of such a performance based definition.

EPA is aware that it is possible that some ethers produced from natural gas-based methanol may utilize less energy than certain other ethers produced from corn-based ethanol. For example, this could be true for TAME produced from refinery isoamylenes versus ETBE produced from field butanes. However, this is due to the difference in the source of the isoolefins used in the ether production process. Use of corn-based ethanol with refinery isoamylenes should save energy relative to TAME using natural gas-based methanol, just as ETBE from field butanes will save energy relative to MTBE. Therefore, EPA is not proposing that ethers such as TAME from natural gas-based methanol with potentially low energy usage be included in the program.

EPA is also aware that the production of higher alcohols, such as propanols and butanols, from renewable feedstock may also produce energy and crude oil savings. However, we are not aware of technical analyses which detail the necessary and likely production processes, nor the resulting energy and crude oil balances. We will consider their inclusion if it can be demonstrated that they also provide similar energy and crude oil benefits.

EPA requests comments on the crude oil and energy savings associated with renewable oxygenates. EPA also requests comment on the adequacy of health effects testing to date for all of the potential renewable oxygenates.

B. Extent and Duration of the Program

EPA proposes that the renewable oxygenates requirement apply to 30 percent of the oxygen content of reformulated gasoline and apply year round. The 30 percent requirement would be measured on an oxygen-equivalent basis and would be applied to the minimum oxygen content of 2.0 weight percent oxygen. This means that on average all reformulated gasoline would be required to have at least a 0.60 weight percent oxygen content (2.0 times 30 percent) provided by renewable oxygenates. This requirement would be applied to all refiners or importers of reformulated gasoline and/or reformulated blend stock for oxygenate blending (RBOB) on average throughout the year, excluding oxygenate blenders. Refiners and importers of reformulated gasoline would also be able to generate and trade any excess use of renewable oxygenates to other producers desiring to use less renewable oxygenates. Therefore, all the current methods that provide flexibility to fuel producers in meeting the oxygen requirement for reformulated gasolines would be extended to meeting the renewable oxygenates requirement. In addition, for purposes of this proposed program averaging and trading would be expanded to allow such activities to occur year round and between various non-attainment areas, since the emissions performance of the various reformulated gasolines would be unaffected. EPA requests comment on the extension and expansion of the oxygen averaging and trading concepts contained in the reformulated gasoline program to this proposed renewable oxygenate program.

EPA considered requiring greater and lesser levels of renewable oxygenates. EPA believes the 30 percent level produces a significant level of the benefits mentioned above while still ensuring feasibility and a diverse supply of oxygenates (i.e., low cost through competition). EPA requests comment, however, on the proposed 30 percent level and on the advantages and disadvantages of different levels.

Given the current absence of bio-methanol capacity, renewable oxygenates would likely be ethanol based. The 30 percent level would require an average production of roughly 630 million gallons of ethanol per year. This is about 60 percent of ethanol's current production capacity of roughly one billion gallons per year. As the vast majority of ethanol is currently sold outside of the reformulated gasoline areas, this would mean a significant near-term geographic shift of ethanol use (in the form of ETBE or ethanol). Additional ethanol capacity on the order of 0.5–1.0 billion gallons per year could likely be added in a couple

of years, as many current plans for additional capacity exist, but have been on hold pending resolution of the likely future demand for ethanol.

With respect to ether production, near-term supply problems could also arise from the substitution of corn-based ethanol for natural gas-based methanol. ETBE production utilizes both ethanol production capacity and ether production capacity. This reduces the amount of MTBE and ethanol which can be blended directly into gasoline, while only replacing roughly one-half of this reduction with ETBE. The increased methanol capacity cannot be easily used in gasoline, because of methanol's very high RVP blending value and its water sensitivity. However, the inclusion of ethanol in the program during the winter should eliminate the need for any reduction in total national oxygenate capacity during this time. Summer oxygenate demand is lower than winter demand due to the absence of demand from the oxyfuel program. Projected 1995 MTBE capacity was expected to be sufficient for summer reformulated gasoline. Therefore, ETBE capacity should also be sufficient. EPA requests comments on the technical feasibility of the 30 percent required level for the 1995 program and on whether the requirement should be phased in over time.

Also, EPA considered proposing different renewable oxygenate levels between gasolines meeting the Region 1 and 2 VOC performance standards. (Region 1 refers to those areas of the U.S. where temperatures are relative high during the summer and where 7.8 RVP gasoline is required to be sold (in ozone non-attainment areas) under EPA's Phase II RVP program. Region 2 refers to the rest of the nation, which is relatively cooler and where 9 RVP gasoline is required.) EPA's previous proposed ethanol incentive program encouraged up to 30 percent ethanol blends in Region 2, but only 20 percent in Region 1. EPA rejected such differential levels here, as the cost of producing Region 1 fuel with non-renewable oxygenates could be less than the cost of producing Region 2 fuel with renewable oxygenates, despite the latter's higher RVP. Differential renewable oxygenate levels could therefore encourage the over-production of Region 1 fuel and its sale in Region 2 as a way to reduce the amount of renewable oxygenates required. In Phase II of the reformulated gasoline program, the RVP distinction between Regions 1 and 2 essentially disappears, so the incentive to overproduce Region 1 fuel would be even greater. EPA requests comments on the absence of a distinction in the required levels for Regions 1 and 2.

EPA considered nominal oxygen levels other than 2.0 weight percent oxygen when applying the 30 percent criteria. EPA's previous ethanol incentive proposal used 2.7 weight percent oxygen, based primarily on the fact that most ethanol blends were produced at a higher level of 3.5 weight percent oxygen, but the simple model generally restricted oxygen levels to 2.7 weight percent. Ethers currently may not lawfully be used at 3.5 weight percent oxygen and the average requirement for reformulated gasoline is only 2.0 weight percent oxygen. Therefore, use of the 2.0 weight percent oxygen level would result in the use of renewable oxygenates for not only 30 percent of the oxygen, but also in roughly 30 percent of the volume of reformulated gasoline, at least for summer gasoline when commingling alcohols are not allowed. Comments are requested on this value.

EPA also considered and rejected limiting the renewable oxygenate requirement to the summer, or high ozone season. EPA's previously proposed ethanol incentive program applied only during this time, in part because we projected that a significant fraction of reformulated gasoline would likely contain ethanol in the winter even without an incentive. However, EPA believes that the benefits discussed earlier occur regardless of the time of year the renewable oxygenate is used and assurance of its use, even in the winter, seems warranted. Therefore, the requirement is being proposed as applying year round. EPA requests comment on this aspect of the program.

One consequence of the year round requirement is that renewable oxygenates could be used preferentially during one season or the other. In particular, since ethanol would qualify as a renewable oxygenate during the winter and is generally cheaper than ETBE (particularly without the need to adjust RVP), ethanol could be used in more than 30 percent of winter reformulated gasoline and renewable ethers used in much less than 30 percent of summer gasoline. By allowing such year round averaging the same overall benefits to the nation are provided while at the same time minimizing the cost and maximizing the flexibility for refiners to comply with the requirements. EPA requests comment on the desirability of these outcomes, particularly on how it might affect the workings of the oxygenate markets.

The final feasibility issue relates to the initial implementation of the program. The reformulated gasoline program will be in effect on January 1, 1995. Even with a very aggressive rulemaking schedule, EPA does not foresee being able to promulgate this renewable oxygenates program earlier than June of 1994. Some time is necessary for ethanol producers to adjust their production schedules, for ether suppliers to set up contracts for the purchase of renewable alcohols and for fuel producers to set up supplies of renewable ethers. Reformulated gasoline producers may also have to adjust their gasoline production plans for a different oxygenate, though use of ETBE may simplify those plans due to its low RVP and higher volume per unit oxygen. Regarding ether producers, EPA believes that at least half of current MTBE capacity is capable of producing ETBE with no addition of equipment. If this is true, then conversion of current MTBE capacity to ETBE production should not be a limitation on implementation. Refiners and importers of reformulated gasoline also need to begin distribution of their fuel prior to January 1, 1995 in order to have turned over the distribution system in time to meet the 1995 requirements. EPA requests comment on the amount of time needed for the various preparatory actions described above to occur in order to avoid high transition costs and possible disruption in supply and on the earliest possible date this program could be implemented. EPA also requests comment on the advantages and disadvantages of a staged implementation, where the amount of required renewable oxygenate would be increased in increments over identifiable time periods (i.e., gradually increasing levels for the period prior to the 1995 high ozone season, the 1995 high ozone season, and thereafter).

III. Enforcement of the Renewable Oxygenate Requirement

The proposed enforcement scheme for the renewable oxygenate requirements would be similar to the enforcement scheme used for the reformulated gasoline requirements. The proposed renewable oxygenate average standard, 0.60 wt% oxygen from renewable oxygenate, would apply to importers, and to refiners separately for each refinery,[1] and would have a calendar

[1] The remainder of this preamble section refers to refiners and importers collectively as refiners, but all references to refiners apply equally to importers unless otherwise noted. Note that downstream oxygenate blenders would not be not subject to the renewable oxygenate requirements.

year averaging period.[2] No per-gallon standard would be included, however. Renewable oxygen credits could be created by any refiner who uses more renewable oxygenate than is required, and renewable oxygen credits could be used by any refiner to achieve compliance with this standard. The conditions and requirements for credit creation, transfer and use that would apply to renewable oxygen credits are the same as the conditions and requirements that apply under reformulated gasoline for benzene and oxygen credits.

Under the proposal, the definition for renewable oxygenate is different in the case of oxygenate used with reformulated gasoline and RBOB that is VOC-controlled versus that used with reformulated gasoline and RBOB that is not VOC-controlled. In the case of VOC-controlled gasoline and RBOB, the oxygenate would have to be an ether, while in the case of non-VOC-controlled gasoline and RBOB the oxygenate could be either an ether, or ethanol or methanol. The reasons for these distinctions are discussed in Section II of this preamble. In either case, the proposal would require that the ether or alcohol be derived from a source other than petroleum, coal, natural gas, or peat.

Mechanisms are being proposed for establishing the renewable nature of oxygenate. These proposed mechanisms are that the refiner would have to purchase the methanol or ethanol from its producer, and would have to retain documents obtained from that person that certify the renewable source of the methanol or ethanol feed-stock. In the case of any methanol- or ethanol-based ether claimed to be renewable oxygenate, the refiner would have to obtain documents that state the name and address of the ether production facility, and the specific nature and source of the feedstock used to produce the methanol or ethanol. EPA requests comment on this proposal on the mechanisms required for establishing the renewable source of oxygenate.

EPA is considering a petition process whereby EPA could expand the definition of renewable oxygenate to include alcohols other than ethanol and methanol, and ethers other than those produced using ethanol and methanol. Possible criteria that could be used in such a petition process include factors such as the renewable nature of the alcohol or ether, the amount of energy used in producing the alcohol or ether, and any air quality implications of using the alcohol or ether with gasoline. EPA is requesting comment on such a petition process generally, and in particular on any criteria that would be appropriate for use in guiding EPA's decisions on a petition.

Under the proposal, refiners would be required to include in renewable oxygenate compliance calculations all reformulated gasoline and RBOB produced during the averaging period. RBOB would be included in the compliance calculations even though refiners are not required to account for oxygen in the case of RBOB under the reformulated gasoline program.

EPA is proposing that refiners be the party responsible for meeting the renewable oxygenate standard for RBOB for several reasons. Refiners control the type and amounts of oxygenate that may be added to RBOB. As a result, if oxygenate blenders were required to meet the renewable oxygenate standard they would be required not only to obtain an adequate supply of RBOB suitable for blending with renewable oxygenate, but also must obtain the particular renewable oxygenate included by the refiner in the RBOB product transfer documents. EPA believes that in many situations adequate supplies of these specific forms of RBOB and/or oxygenate would not be available to downstream oxygenate blenders, and that in consequence it often would not be feasible for downstream oxygenate blenders to achieve the renewable oxygenate standard. This availability concern is due in part to the fact that downstream oxygenate blenders in many cases are small entities, who may lack the market force necessary to compel adequate supplies of the appropriate RBOB's and oxygenates at the appropriate time.

Trading in renewable oxygen credits potentially could aid oxygenate blenders in meeting the renewable oxygenate standard. However, this would require a multitude of small entities to trade renewable oxygen credits and with significant transaction costs. EPA does not believe there are any significant benefits that result from applying the renewable oxygenate standard to downstream oxygenate blenders that would justify these additional costs.

EPA's proposal would allow refiners to include in renewable oxygenate compliance calculations the renewable oxygenate that is added by downstream oxygenate blenders, provided the refiner carries out an appropriate quality assurance program over the downstream oxygenate blender. Absent such a program, the refiner would have to assume that a non-renewable oxygenate was blended downstream. Even where a refiner is able to include renewable oxygenate blended downstream, however, the refiner could not use this oxygen to meet the reformulated gasoline oxygen standard applicable to the refinery, under § 80.41, because under the existing reformulated gasoline requirements the reformulated gasoline oxygen standard must be met by the downstream oxygenate blender for RBOB used by the oxygenate blender.

The proposed conditions restricting when refiners could include in compliance calculations the renewable oxygenate added downstream are similar to the restrictions contained in the downstream oxygenate provisions under the reformulated gasoline program. The proposed conditions deal with refiner control and oversight over the downstream blending operation, and are intended to ensure that when refiners claim credit for downstream blending of renewable oxygenate that the oxygenate added is renewable, that the renewable oxygenate is added to the RBOB produced by the refiner, and that the volume of renewable oxygenate claimed is correct.

EPA requests comments on its proposal to apply the renewable oxygenate standard to refiners and importers of RBOB, and to not apply this standard to downstream oxygenate blenders.

The renewable oxygenate requirements would apply to reformulated gasoline sold in the two covered areas in the State of California, Los Angeles and San Diego. This raises enforcement-related complications because in most cases refiners who produce gasoline for use in California, beginning in March, 1996 are exempt from most reformulated gasoline enforcement mechanisms. See § 80.81. The California exemption is based on the fact that beginning in March 1996, all gasoline used in California will be subject to the California Phase II reformulated gasoline State standards ("California gasoline"), which EPA has concluded are at least as stringent as the federal Phase I reformulated gasoline standards. As a result, refiners who produce California gasoline are exempt from most federal reformulated gasoline enforcement requirements, including designating gasoline as either reformulated or conventional gasoline,

[2] Reformulated gasoline produced during 1994 for use in 1995 will be averaged with gasoline produced in 1995 under the reformulated gasoline regulations. This approach to averaging of gasoline produced during 1994 would be followed for renewable oxygenate averaging, creating an averaging period that is longer than one year for 1994–1995 only.

record keeping[3] and reporting. Refiners of California gasoline are not exempt, however, from meeting the federal reformulated gasoline standards. The exemption for California gasoline is described in detail in the reformulated gasoline final rule preamble.

As a result of this exemption in the reformulated gasoline rule, refiners who produce California gasoline will not be required to follow procedures necessary to establish the volume of gasoline that is sold into the two federal reformulated gasoline covered areas located in California. It is the volume of gasoline used in these two covered areas that is subject to the renewable oxygenate requirement.

EPA proposes to resolve this difficulty by requiring refiners of California gasoline to meet the renewable oxygenate standard for a specified percentage of their volume of California gasoline. This specified percentage would be derived from the historic volumes of gasoline used in Los Angeles and San Diego (which EPA believes to be 7 billion gallons per year), as compared to the historic volume of gasoline used in other portions of the State of California (which EPA believes to be 6 billion gallons per year). Using this approach, each refiner who produces California gasoline would be required to meet the renewable oxygenate standard for 54% of their volume of California gasoline.

An additional enforcement complication for California gasoline relates to the different definitions of renewable oxygenate that apply to reformulated gasoline that is VOC-controlled versus the gasoline not designated as VOC-controlled. This complication arises because, under the exemption for California gasoline refiners are exempt from the designation requirements of § 80.65(d). It is this designation of reformulated gasoline that is proposed as the mechanism for distinguishing the gasoline for which renewable ethers only may be used (VOC-controlled gasoline) versus the gasoline for which renewable ethers, plus ethanol and methanol may be used (non-VOC-controlled gasoline). This designation approach is not possible in the case of California gasoline unless the reformulated gasoline designation requirements are imposed on refiners of California gasoline.

EPA request comment on the appropriate approach for resolving this dilemma.

[3] Refiners of California gasoline are required to keep records required by California State law for five years, however.

In addition, refiners who produce California gasoline would be required to keep records and submit reports necessary to establish compliance with the renewable oxygenate standard.

EPA is seeking comment on this proposed approach for applying the renewable oxygenate requirement to California gasoline, including the assumption about the percentage of California gasoline sold in the federal reformulated gasoline covered areas, and the record keeping and reporting that is necessary for refiners of California gasoline to establish compliance with the renewable oxygenate standard.

The renewable oxygenate proposal would require several types of record keeping beyond that otherwise required for reformulated gasoline: Records associated with establishing the source of alcohol or ether claimed to be renewable oxygenate, records associated with California gasoline, and records associated with use of oxygenate blended by downstream oxygenate blenders.

Refiners also would be required to submit reports that are not included in the reformulated gasoline program, dealing with the renewable oxygenate content of reformulated gasoline, the compliance calculations for the renewable oxygenate standard, and the transfer of renewable oxygen credits.

EPA is proposing attest provisions dealing with the renewable oxygenate requirements, that would be carried out in conjunction with the attest requirements for reformulated gasoline. Compliance by refiners with the renewable oxygenate requirements would be verified through these attest requirements.

Provisions contained in the reformulated gasoline regulations not discussed in this preamble would apply to the renewable oxygenate standard in the same manner they apply to other reformulated gasoline standards. These include, *inter alia*, the definitions of parties; the dates the requirements apply; the designation requirements; testing requirements, including independent sampling and testing; and controls, prohibitions, liabilities, and defenses.

There are no gasoline survey requirements proposed for renewable oxygenates, because there is no air quality implication if any covered area receives greater than or less than the average amount of reformulated gasoline produced using renewable oxygenate.

IV. Federal Preemption

This proposal is based on section 211(k) of the CAA. The provisions for the prohibition of state and local controls under section 211(c)(4) therefore do not apply.

V. Environmental, Energy, and Economic Impacts

The environmental impacts of this program are beneficial. Since the proposed renewable oxygenate requirement would not modify any of the emission performance standards applicable to reformulated gasoline, the only environmental impacts would be those not covered by the simple or complex models used to determine compliance. There are three such emission impacts.

The first is the current potential for an increase in the RVP of the gasoline pool due to fuel commingling in vehicle fuel tanks and the second is the effect of mid-range fuel distillation (e.g., the fraction of fuel evaporated at 130°F) on non-exhaust emissions.

Both of these effects which concern the formation of ozone were addressed in the Regulatory Impact Analysis for the Final Rule for the reformulated gasoline program. Regarding the commingling RVP effect, ethanol blends are the only fuels which cause this increase. (Methanol blends would also produce such an RVP increase, but they are not expected to be used in reformulated gasoline during the high ozone season.) Based on the analysis in the RIA, the commingling resulting from a 30% ethanol blend market share would increase the effective average RVP of the gasoline pool and increase total VOC emissions (including both exhaust and non-exhaust VOC emissions) by 5% percent. The use of ethanol blends in the summer is expected to be very small under this proposal, since ethanol would not qualify as a renewable oxygenate, but ethanol use would be strongly encouraged as an ETBE feedstock. However, ethanol use without this proposal was expected to be somewhat less than 30 percent of the reformulated gasoline sold during the high ozone season absent an incentive, the actual reduction in VOC emissions due to this proposal would be somewhat less than 5 percent.

Regarding mid-range distillation, ETBE reduces this effect relative to ethanol blends and even relative to MTBE. For example, ETBE blends qualifying under the Complex Model in the year 2000 are projected to reduce total VOC emissions by 2 percent relative to MTBE blends. As ETBE is expected to be the dominant renewable oxygenate used in the near term during the high ozone season, this reduction

should translate directly into in-use VOC emissions from gasoline fueled vehicles in reformulated gasoline areas. This represents 14,000 annualized tons of VOC control in these areas.

The third emission impact relates to greenhouse gas emissions, and in particular, CO_2 emissions. Because more fossil energy is generally used in the production of methanol from natural gas than is used in producing ethanol from corn, net CO_2 emission reductions are expected under the program proposed here. However, since there are no assurances that the most efficient processes will be used to produce the oxygenates required through this proposal, comments are requested on the desirability of adding CO_2 emission reduction criteria for oxygenates to qualify as "renewable". In particular, comments are requested on the proposed option of requiring that the production of renewable oxygenates demonstrate up to a 20% reduction in CO_2 emissions as compared to reformulated gasoline from crude oil and nonrenewable oxygenates. Since CO_2 emissions are not the only emission from the production of renewable oxygenates (CFCs, NOx, N_2O, Methane, etc.) that may effect global warming, EPA also requests comment specifically on the magnitude of these emissions from the production of current renewable oxygenates, and how best to incorporate other such emissions into such a CO_2 reduction criteria.

The primary economic impacts of this proposal include the crude oil savings, the added cost of producing and using the renewable oxygenate, the reductions in revenues to the U.S. Highway Trust Fund, and the impacts on the various oxygenate and fuel industries affected. It was already mentioned above that the use of ETBE in lieu of MTBE should reduce crude oil consumption by 1.8% per gallon of reformulated gasoline. Assuming half of all crude oil is used to produce gasoline, 32.1 percent of all gasoline will have to be reformulated and that 45.8 percent of this will be sold during the high ozone season, the summer portion of this program would reduce total U.S. consumption of crude oil by 0.13 percent over and above the savings already occurring through the reformulated gasoline program, or roughly 9000 barrels per day. Since the U.S. imports roughly half of its crude oil and all of the savings can be expected to apply to imports, total imports of crude oil should decrease by 0.26 percent. In the winter, ethanol use will likely predominate and produce slightly lower benefits due to its higher oxygen content per volume. Also, its primary benefit is relative to imported methanol and MTBE. While the impact of this program is expected to be positive, EPA lacks sufficient information to project the size of these imports absent this program. Therefore, EPA requests comment on the energy impacts of this proposed program during the winter months.

In the Regulatory Impact Analysis to the final rule for the reformulated gasoline program, EPA estimated that the production and use of ETBE in reformulated gasoline would cost $0.073 per gallon more than that for MTBE. Reformulated gasoline at 2.1 weight percent oxygen must contain 12.8 volume percent ETBE. Therefore, ETBE containing reformulated gasolines are projected to cost $0.0093 per gallon more than those with MTBE. This figure includes the differences in octane, RVP and oxygen content of the two ethers. Extending this cost to 30 percent of all reformulated gasoline used during the high ozone season, the total annual cost to the nation would be $48 million.

During the winter, EPA expects much of the renewable oxygenate will be ethanol. When its octane and diluting properties are taken into account, and its high RVP need not be counteracted, ethanol is much cheaper than MTBE or ETBE. At the same time, there tend to be additional costs to distributing ethanol and its gasoline blendstock due to the water soluble nature of ethanol. While these may balance any savings in production costs, EPA does not project any net additional costs in the winter due to this proposed program.

Regarding lost Highway Trust Fund receipts, EPA projects that 630 million gallons of ethanol would be used per year under this program, if ethanol were the only renewable oxygenate used. At a tax credit of $0.54 per gallon, this amounts to $340 million of lost highway related revenue.

Finally, there could be economic impacts on a number of industries and economic sectors due to this program. The revenues and net incomes of both corn farmers and ethanol producers should rise significantly, due to higher corn and ethanol demand and prices, respectively. Expenditures for government farm price supports could decrease. Revenues and net incomes of domestic methanol producers and overseas producers of both methanol and MTBE would likely decrease due to reduced demand and prices. Oil refiners could experience transitional costs due to an additional requirement and would likely face higher oxygenate costs. However, their crude processing costs would likely decrease due to ETBE's greater volume (and diluting properties) and lower RVP. If the oil industry is able to pass on higher oxygenate costs to the consumer, the net income of the oil industry would not be affected.

VI. Public Participation

EPA invites comment on all aspects of today's action. EPA has specifically requested comments on a number of specific areas throughout the previous discussion. A list of these and other specific areas for comment follows:

—EPA's statutory authority.
—The extent to which renewable oxygenates will be used in reformulated gasoline absent today's proposal.
—The economic, energy, and crude oil import benefits to the nation resulting from today's proposal.
—Any other approaches which could be used to achieve the same objective.
—Likelihood that the renewable oxygenate requirement will be met with domestically produced oxygenates absent a requirement to this effect and whether such a requirement would be desirable and legally permissible and any other suggested approaches to ensure the domestic benefits of this program.
—The climate change aspects of the proposal.
—The definition of renewable oxygenates.
—The need for performance based standards for fossil energy or greenhouse gas emissions.
—Health effects data regarding renewable oxygenates that may potentially be used as a result of the program.
—The appropriate level for the renewable oxygenate requirement, its feasibility, lead-time requirements, the potential need for a phase-in period, and any other supply related issues.
—The need and justification for a year-round program in lieu of a summer only program.
—The allowance for year-round averaging of renewable oxgenate content.
—The applicability of the program only to producers of reformulated gasoline rather than including downstream blenders.
—The enforcement related provisions.
—Its impact on the already promulgated reformulated gasoline program.
—A petition process to include additional renewable oxygenates.

A public hearing regarding today's proposal will be held on January 14, 1994 beginning at 9 a.m. in the Washington DC area. See **ADDRESSES**. The comment period for today's proposal will close on February 14, 1993.

VII. Compliance With Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (Pub.L. 96–354), requires Federal regulatory agencies to consider the impact of rulemaking on "small entities." If a rulemaking will have a significant impact on small entities, agencies must consider regulatory alternatives that minimizes economic impact.

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to examine the effects of the renewable oxygenate regulation and to identify significant adverse impacts of federal regulations on a substantial number of small entities. Because the RFA does not provide concrete definitions of "small entity," "significant impact," or "substantial number," EPA has established guidelines setting the standards to be used in evaluating impacts on small businesses.[4] For purposes of the renewable oxygenate requirement for reformulated gasoline, a small entity is any business which is independently owned and operated and not dominant in its field as defined by SBA regulations under section 3 of the Small Business Act.

The Agency believes that the renewable oxygenate program being proposed today is unlikely to have a significant economic impact on a substantial number of small entities. The renewable oxygenate program will secure a market in the reformulated gasoline program for oxygenate producers while simultaneously allowing refiners flexibility in fulfilling the statutory oxygenate requirement. In addition EPA decided against applying the requirement to downstream oxygenate blenders, many of which are small entities. As discussed above, this would have required each blender to maintain at least two sources of oxygenate, one renewable and one not. Such an approach would prove to be either uneconomical or involve significant transaction costs related to averaging and trading.

Administrator certifies that this proposal will not have a significant impact on small entities.

However, EPA invites comment on the question of significant impacts on small entities. EPA also requests all relevant data which justify any conclusions submitted.

[4] U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Compliance with the Regulatory Flexibility Act," EPA Office of Policy, Planning, and Evaluation, 1984. In addition, U.S. Environmental Protection Agency, Memorandum to Assistant Administrators, "Agency's Revised Guidelines for Implementing the Regulatory Flexibility Act," Office of Policy, Planning, and Evaluation, 1992.

VIII. Statutory Authority

Section 211(k)(1) provides that EPA is to promulgate regulations "establishing requirements for reformulated gasoline" in specified ozone nonattainment areas (the first sentence of Section 211(k)(1)), and that such regulations must require the "greatest reductions achievable through the reformulation of gasoline, taking into consideration" various factors such as cost, available technology, health and environmental impacts, and energy requirements (the second sentence of Section 211(k)(1)). EPA interprets the first sentence of Section 211(k)(1) as broadly providing EPA with the authority to establish any and all reasonable requirements that are designed to achieve the results stated in the second sentence. As discussed previously, EPA believes that the reformulated gasoline emission performance standards combined with a requirement that refiners and importers use a specified percentage of renewable oxygenates tends to maximize achievement of the objectives of Section 211(k)(1)—it should result in the greatest reductions achievable while tending to optimize the combination of energy requirements, costs, and health and environmental impacts.

In effect, EPA believes that the second sentence of Section 211(k)(1) does not limit it to promulgation of emission reduction standards. It requires that EPA's regulations ensure a certain result, and provides EPA with the discretion to adopt appropriate requirements designed to achieve that result.

In addition, the first sentence of Section 211(k)(1) would appear to grant EPA broad general authority to promulgate reasonable requirements for reformulated gasoline, independent of and in addition to the obligation to require the greatest achievable VOC and toxics emissions reductions under the second sentence of Section 211(k)(1). For the reasons described earlier, EPA believes it appropriate to exercise this general authority by proposing to require the use of renewable oxygenates.

This interpretation of Section 211(k)(1) is consistent with the oxygen content requirements of Section 211(k)(2). EPA does not believe compliance with the renewable oxygenate provisions will interfere with the ability of refiners to comply with the oxygen content requirements of Section 211(k)(2). While EPA believes that Section 211(k)(2) would not appear to provide independent authority for the renewable oxygenate requirement, EPA is instead relying primarily on the general grant of authority in Section 211(k)(1). While the legislative history of Section 211(k)(2) indicates that in general Congress believed several oxygenates could be used to meet its requirements,[5] this does not indicate an intention to limit EPA's otherwise broad grant of authority under Section 211(k)(1). EPA also invites comment on whether Section 211(k)(2) would provide an independent source of authority for a renewable oxygenate requirement.

Finally, EPA believes that Section 211(k)(4) does not preclude the renewable oxygenate provisions proposed herein. Section 211(k)(4) states that the Administrator "shall certify a fuel formulation or slate of fuel formulations as complying with this subsection if such fuel or fuels—(i) comply with the requirements of paragraph (2), and (ii) achieve equivalent or greater reductions * * * than are achieved by a reformulated gasoline meeting the applicable requirements of paragraph (1)." This could be interpreted as requiring certification of a fuel that met the oxygen and other requirements of paragraph (2) and the emissions requirements of paragraph (2) even if it did not comply with the proposed renewable oxygenate requirement. Section 211(k)(1), however, authorizes EPA to establish requirements above and beyond those required under paragraph (2) and (3), and Section 211(k)(1) and (4) must be read together to provide a meaningful interpretation to both provisions. EPA believes that a reasonable interpretation requires certification of a fuel as reformulated as long as it complies with the requirements of paragraphs (2) and (3), as well as any additional requirements established under paragraph (1). Since the renewable oxygenate provision is an additional requirement established under Section 211(k)(1), certification is not required under Section 211(k)(4)(B) unless a fuel or slate of fuels complies with the requirement.

IX. Administrative Designation and Regulatory Analysis

Pursuant to Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant

[5] See, e.g., 136 Cong. Rec. S 16937 (October 27, 1990) (Sen Durenberger); 136 Cong. Rec. H 2852 (May 23, 1990) (Rep. Richardson, noting among other things the energy and other benefits expected from the use of domestic renewable oxygenates).

regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way 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 entitlement, grants, user fees, or loan programs or the rights and obligations of 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.

Pursuant to the terms of Executive Order 12866, the Administrator has determined that this proposed rule is a "significant regulatory action" based on the above criteria. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will appear in the Final Rule and be documented in the public record: EPA Air Docket A–92–12.

X. Compliance with the Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* A separate **Federal Register** notice will be published requesting comments on the information collection requirements. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: December 15, 1993.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545 and 7601(a).

2. EPA proposes that § 80.83 be added to read as follows:

§ 80.83 Renewable oxygenate requirements.

(a) *Definition of renewable oxygenate.*

(1) For purposes of subparts D and F of this part 80, a renewable oxygenate is defined:

(i) In the case of oxygenate added to reformulated gasoline or RBOB designated as VOC-controlled, as any ether that is produced using produced ethanol or methanol that is derived from a source other than petroleum, coal, natural gas, or peat; and

(ii) In the case of oxygenate added to reformulated gasoline or RBOB not designated as VOC-controlled, as any produced ether, or produced ethanol or methanol, that is derived from a source other than petroleum, coal, natural gas, or peat.

(2) *Reserved.*

(b) *Renewable oxygenate standard.*

(1) During each calendar year the reformulated gasoline and RBOB that is produced by any refiner at each refinery, or is imported by any importer, shall contain a volume of renewable oxygenate such that the reformulated gasoline and RBOB, on average, has an oxygen content from such renewable oxygenate that is equal to or greater than 0.60 wt%.

(2)(i) The oxygenate used to meet the standard under paragraph (b)(1) of this section may also be used to meet any oxygen standard under § 80.41; except that

(ii) The renewable oxygenate added by a downstream oxygenate blender shall not be used by any refiner or importer to meet the oxygen standard under § 80.41, except through the transfer of oxygen credits.

(c) *Downstream oxygenate blending using renewable oxygenate.* In the case of any refiner that produces RBOB, or any importer that imports RBOB, the oxygenate that is blended with the RBOB may not be included with the refiner's or importer's compliance calculations under paragraph (d) of this section unless:

(1) The oxygenate meets the applicable renewable oxygenate definition under paragraph (a) of this section; and

(2) The refiner or importer meets the downstream oxygenate blending oversight requirements specified in §§ 80.69(a) (5) through (7).

(d) *Compliance calculation.*

(1) Any refiner for each of its refineries, and any importer shall, for each calendar year averaging period, determine compliance with the renewable oxygenate standard by calculating:

(i) The renewable oxygen compliance total using the following formula:

$$CT_{ro} = \left(\sum_{i=1}^{n} V_i\right) * 0.60$$

where

CT_{ro}=the compliance total for renewable oxygen

V_i=the volume of gasoline or RBOB batch i

n=the number of batches of gasoline and RBOB produced or imported during the calendar year averaging period

and

(ii) The renewable oxygen actual total using the following formula:

$$AT_{ro} = \sum_{i=1}^{n} (V_i * RO_i)$$

where

AT_{ro}=the actual total for renewable oxygen

V_i=the volume of gasoline or RBOB batch i

RO_i=the oxygen content, in wt%, in the form of renewable oxygenate of gasoline or RBOB batch i

n=the number of batches of gasoline or RBOB produced or imported during the averaging period

(iii) Compare the renewable oxygen actual total with the renewable oxygen compliance total.

(2)(i) The actual total must be equal to or greater than the compliance totals to achieve compliance, subject to the credit transfer provisions of paragraph (e) of this section;

(ii) If the renewable oxygen actual total is less than the renewable oxygen compliance total, renewable oxygen credits must be obtained from another refiner or importer in order to achieve compliance;

(iii) The total number of renewable oxygen credits required to achieve compliance is calculated by subtracting the renewable oxygen actual total from the renewable oxygen compliance total; and

(iv) If the renewable oxygen actual total is greater than the renewable oxygen compliance total, renewable oxygen credits are generated.

(v) The total number of renewable oxygen credits which may be traded to another refiner for a refinery, or to another importer, is calculated by subtracting the renewable oxygen compliance total from the renewable oxygen actual total.

(e) *Credit transfers.* Compliance with the renewable oxygenate standard

specified in paragraph (b)(1) of this section may be achieved through the transfer of renewable oxygen credits, provided that the credits meet the criteria specified in § 80.67(h)(1) (i) through (iv) and § 80.67(h) (2) and (3).

(f) *Use of methanol or ethanol as a renewable oxygenate.* Methanol or ethanol, or an ether produced using methanol or ethanol, may be treated as renewable oxygenate only if:

(1) The methanol or ethanol meets the renewable oxygenate definition under paragraph (a) of this section; and

(2) The refiner or importer is able to establish in the form of documentation obtained from the person who produced the methanol or ethanol, that the methanol or ethanol was produced from a source other than petroleum, coal, natural gasoline, or peat.

(g) *Record keeping.* Any refiner or importer shall for a period of five years maintain the record specified in this paragraph (g) in a manner consistent with the requirements under § 80.74, and deliver such records to the Administrator upon request. The records shall contain the following information:

(1) The use of methanol or ethanol as a renewable oxygenate documents required under paragraph (f) of this section; and

(2) The volume, type, purity, and sources of any renewable oxygenate used.

(h) *Reporting requirements.*

(1) Any refiner for each refinery, or any importer, shall for each batch of reformulated gasoline and RBOB include in the quarterly reports for reformulated gasoline required by § 80.75(a) the weight percent oxygen in the form of renewable oxygenate contained in the gasoline, or RBOB subsequent to oxygenate blending (if allowed under paragraph (c) of this section).

(2) Any refiner for each refinery, or any importer, shall submit to the Administrator, with the fourth quarterly report required by § 80.75(a), a report for all reformulated gasoline and RBOB that was produced or imported during the previous calendar year averaging period, that includes the following information:

(i) The total volume of reformulated gasoline and RBOB;

(ii) The compliance total for renewable oxygen;

(iii) The actual total for renewable oxygen;

(iv) The number of renewable oxygen credits generated as a result of actual total renewable oxygen being greater than compliance total renewable oxygen;

(v) The number of renewable oxygen credits required as a result of actual total renewable oxygen being less than compliance total renewable oxygen;

(vi) The number of renewable oxygen credits transferred to another refinery or importer;

(vii) The number of renewable oxygen credits obtained from another refinery or importer; and

(viii) For any renewable oxygen credits that are transferred from or to another refinery or importer, for any such transfer:

(A) The names, EPA-assigned registration numbers and facility identification numbers of the transferor and transferee of the credits;

(B) The number of renewable oxygen credits that were transferred; and

(3) The date of transaction.

(i) *Renewable oxygenate requirements for reformulated gasoline used in the State of California.* Notwithstanding the provisions contained in § 80.81, any refiner or importer of California gasoline, as defined in § 80.81, shall:

(1) Meet the renewable oxygenate standard specified in paragraph (a) of this section, for a portion of the volume of the California gasoline produced by the refiner or imported by the importer, equal to the total volume produced or imported multiplied times 0.54; and

(2) With regard to any renewable oxygenate content of any California gasoline produced or imported, meet:

(i) The determination of properties requirements of § 80.65(e);

(ii) The independent analysis requirement of § 80.65(f);

(iii) The record keeping requirements of § 80.74; and

(iv) The reporting requirements of § 80.75.

[FR Doc. 93–31361 Filed 12–23–93; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 258

[FRL–4524–3]

RIN 2050–AD04

Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to amend the financial assurance provisions of the Municipal Solid Waste Landfill Criteria, which were promulgated on October 9, 1991, under subtitle D of the Resource Conservation and Recovery Act. Those regulations require owners and operators of municipal solid waste landfills (MSWLFs) to demonstrate financial assurance for the costs of closure, post-closure care, and corrective action for known releases associated with their facilities. The regulations currently specify several mechanisms that owners and operators may use to demonstrate financial assurance for those costs. This proposed rule would increase the flexibility available to owners and operators by adding two mechanisms to those currently available: A financial test for use by local government owners and operators, and a guarantee by local governments that wish to guarantee the costs for an owner or operator. This proposed rule also would increase the flexibility available to owners and operators by allowing them to use certain combinations of allowable mechanisms to demonstrate financial assurance.

Consistent with the other mechanisms allowed under the current landfill criteria, the financial test and guarantee proposed in this rule are designed to be self-implementing, with greater flexibility allowed in States that have received approval for their subtitle D MSWLF programs.

DATES: Comments on this proposed rule must be submitted on or before February 25, 1994.

ADDRESSES: Written comments on this proposal should be addressed to the docket clerk at the following address: Environmental Protection Agency, RCRA Docket (OS–305), 401 M Street SW., Washington, DC 20460. Commenters should send one original and two copies and place the docket number (F–93–LGFP–FFFFF) on the comments. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. Docket materials may be reviewed by appointment by calling (202) 260–9327. Copies of docket materials may be made at no cost, with a maximum of 100 pages of material from any one regulatory docket. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline at 1–800–424–9346 (in Washington, DC call (703) 920–9810). For other information contact Ed Coe at (703) 308–8624, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

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I. Authority

These amendments are proposed under the authority of Sections 1008, 4004, and 4010 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6907, 6944, and 6949a.

II. Background

On October 9, 1991, the Agency promulgated revised criteria for MSWLFs, which established minimum Federal standards to assure that MSWLFs are designed and managed in a manner that is protective of human health and the environment, taking into account the practical capability of the MSWLFs (56 FR 50978). The minimum Federal standards include location restrictions, facility design and operating criteria, and groundwater monitoring, corrective action, financial assurance, closure, and post-closure care requirements.

The Agency proposed the MSWLF criteria, including financial assurance requirements, on August 30, 1988 (53 FR 33314). At that time, the Agency proposed a performance standard that owners and operators would have to meet to demonstrate financial assurance and did not propose specific mechanisms. The Agency solicited public comment on this approach and, at the same time, requested comment on whether the Agency should develop financial test mechanisms for use by local governments and corporations.

Commenters on the proposed rule argued that the proposed performance standard lacked sufficient detail to guide States in the development and implementation of requirements with any consistency among States, and that the Agency should develop specific mechanisms that could be used to demonstrate financial assurance. Commenters also supported the development of a local government financial test and a corporate financial test.

In response to comment, the October 9, 1991, final rule promulgated not only the financial assurance performance standard, but also a number of specific financial mechanisms that owners and operators can use to demonstrate financial assurance. Those mechanisms include trust funds, surety bonds, letters of credit, insurance, and State assumptions of responsibility, all of which are allowable mechanisms under the regulations governing subtitle C waste treatment, storage, and disposal facilities (TSDFs). In addition, to retain States' flexibility in implementing the subtitle D program, the final rule allowed approved States to use any State-approved mechanism that meets the financial assurance performance standard of section 258.74.

The Agency also agreed with commenters on the August 30, 1988, proposal who supported the development of financial tests both for local governments and for corporations. However, at the time the final MSWLF criteria were promulgated, the Agency had not yet completed the analyses necessary to propose financial tests for use under subtitle D. Therefore, the Agency announced in the October 9 preamble that it would develop both a local government and corporate financial test and continued to conduct the necessary analyses. Today's **Federal Register** notice proposes a financial test and guarantee for use by local governments. The Agency is also developing a second **Federal Register** notice, which will propose a financial test and guarantee for use by corporations.

The effective date of the financial assurance provisions promulgated in the original landfill criteria final rule was April 9, 1994. At that time, the Agency believed that it had allowed adequate time to promulgate a financial test for local governments and another for corporations. Neither financial test was promulgated within the timeframe anticipated, yet the Agency continues to believe that these financial tests should be available before the financial responsibility provisions become effective. Therefore, to allow additional time to promulgate financial tests for local governments and corporations, the Agency promulgated a final rule on October 1, 1993, which delayed the effective date of the financial assurance provisions an additional year, that is, until April 9, 1995 (see 58 FR 51536).

III. Regulatory Approach of Proposed Rule

The approach taken in developing today's proposal is consistent with the Agency's goals and objectives introduced in the August 30, 1988, proposed MSWLF criteria and in the October 9, 1991, final criteria. First, the proposed rule is intended to decrease the costs associated with financial assurance requirements while assuring that funds are available to cover the costs of closure, post-closure, and corrective action associated with MSWLFs. In addition, these proposed requirements are designed to be self-implementing and to provide maximum flexibility to States. Each of these topics is discussed below.

A. Approach to Development of Today's Local Government Financial Test and Guarantee

As noted above, the purpose of the financial assurance requirements for MSWLFs is to ensure that adequate funds will be available to cover the associated costs of closure, post-closure care, and corrective action, if necessary. A financial test is one mechanism that owners and operators can use to satisfy those requirements. Financial tests typically consist of a set of financial criteria such as financial ratios and other accounting measures designed to measure the owner or operator's ability to meet its obligations in a timely manner. Thus, through a financial test, MSWLF owners and operators can demonstrate to the Agency that they can satisfy the goals of financial assurance

on their own, and do not need to procure a third-party instrument to assure that the obligations associated with their facilities will be met.

Because an owner or operator using a financial test does not have to secure a third-party instrument, availability of a financial test decreases the cost of financial assurance to the regulated community. In order to decrease the financial assurance costs associated with MSWLFs, the Agency wishes to make the local government financial test available to as many owners and operators as possible. At the same time, the Agency recognizes that a financial test is not the most suitable mechanism for all MSWLF owners and operators. If available funds are insufficient or are not readily available for closure, post-closure or corrective action activities, those activities may be delayed, resulting in an increased likelihood of releases to the environment. With the above considerations in mind, today's proposed rule is designed to maximize the availability of a financial test mechanism. To accomplish this goal, the proposal allows owners and operators to combine financial mechanisms and use a financial test or guarantee to cover a portion of the total costs of closure, post-closure care, and corrective action, while the remaining costs are covered by an alternative financial mechanism. The Agency believes that this approach will make the local government financial test as available as possible to small local governments and still provide protection of human health and the environment by assuring that adequate funds will be available for closure, post-closure, and corrective action costs.

B. Implementation of Today's Proposal in Approved and Unapproved States

Today's proposal would amend part 258 by adding additional options for local governments to use when demonstrating financial assurance for the costs of closure, post-closure care and clean-up of known releases. States and Tribes will not be required to include these options in their MSWLF programs, since they may choose to establish programs that are more stringent than the Federal part 258 criteria. EPA will be able to approve the financial assurance portion of a State or Tribe's program so long as it includes at least one of the options promulgated in October 1991 or added by today's proposal (if promulgated).

As a matter of Federal law, these proposed tests (if promulgated) will be available in all States and all Tribal jurisdictions. EPA however, cautions owners and operators that wish to use the options in the federal program that they should also look at the options available under State or Tribal law. If the State or Tribe's rules do not include the option that the owner or operator's wishes to use, the owner or operator would run the risk of being out of compliance with State or Tribal law. State and Tribal laws for MSWLFs are fully effective even when not approved by EPA.

In unapproved States or Tribes, if State or Tribal law did not preclude the use of options proposed today (either because it did not include any financial assurance requirements, included only a general requirement that left the choice of mechanism to the discretion of the owner or operator, or included mechanisms resembling those proposed today) an owner or operator would be able to use the local government test or guarantee described in today's proposal (if promulgated) to satisfy both State or Tribal and Federal law.

In a State or Tribe with approval for the financial assurance portion of its MSWLF program, the owner or operator would be limited to the mechanisms in the approved program as a matter of State or Tribal law. If the State or Tribe did not allow use of the options described in this proposal, the options would not be available under State or Tribal law. EPA reminds owners and operators, however, that the Federal financial assurance rules also allow States and Tribes the option of approving mechanisms that meet the general performance standard in 40 CFR 258.74 on a case-by-case basis (see 40 CFR 258.74(i)). In this situation, the owner or operator would be able to request the State or Tribal agency to approve the use of the options described in this proposal for his or her facility. (For a discussion of the effect of EPA's approval of a State or Tribal program on the Federal regulations, see 56 FR 50995.)

Owners and operators who can use the options in today's proposal under State or Tribal law would be required to maintain appropriate documentation of the mechanism in the facility's operating record. They would not be required to submit that documentation to the State or Tribe, but only to notify the State or Tribal Director that the required items have been placed in the operating record. Owners and operators using the financial test or guarantee would also be required to update all required financial test information on an annual basis, and retain this information in their operating records. In addition, if an owner or operator (or guarantor) were to become unable to meet the financial test criteria, he would be required to notify the State or Tribal Director and establish alternate financial assurance within specified deadlines. Finally, in order to cancel a guarantee, the guarantor would have to notify both the State or Tribal Director and the owner or operator at least 120 days prior to cancellation.

C. Small Communities

The Agency is concerned about the cost of financial assurance, particularly in the case of small communities. In developing today's proposed rule, the Agency has given special consideration to the needs of small communities in meeting their obligations. The Agency believes that a financial test can decrease the cost of financial assurance and has, therefore, designed the financial test proposed today to make it available to small communities to the extent that they can meet their obligations. To do this, the Agency has proposed that where the financial resources of a local government are small relative to the size of its obligations, the local government be able to use the financial test to assure a portion of its obligations. The remaining obligations must then be assured through another mechanism. For example, a small community that owns a large landfill may be able to demonstrate financial responsibility through the local government test for some of the costs of closure and post-closure care. Only the remaining costs would need to be covered by guarantees offered by other local governments that use the small community's landfill.

IV. Summary of Proposed Rule

Today's proposed rule would add two financial assurance mechanisms to those provided in the October 9 rule: (1) A local government financial test, and (2) a local government guarantee. In addition, today's proposed rule would allow owners and operators to use a combination of certain mechanisms to assure the costs associated with their MSWLFs.

A. Local Government Financial Test (Section 258.74(f))

The local government financial test proposed today consists of a financial component, a public notice component, and a recordkeeping and reporting component. A local government must satisfy each of the three components to pass the test. In order to maximize the availability of the test and thus reduce costs to the extent possible, today's proposed rule also would allow a local government to use the test to assure a portion of the costs of closure, post-closure care, and corrective action

associated with a MSWLF, and to obtain an alternative financial mechanism for any remaining costs. Finally, in order to continue to use the test, owners and operators must pass the test on an annual basis.

The remainder of this section summarizes each major component of the local government financial test. More detailed discussion of each component and of the development of this proposed local government financial test can be found in the docket for this rulemaking, both in the Background Document and in a document entitled "Supplementary Information—Development of the Local Government Financial Test."

1. Financial Component (Section 258.74(f)(1))

The financial component of the local government financial test is designed to reflect a local government's financial health and strength, and thus serve as a measure of the local government's financial capability to meet its assured obligations. To satisfy the financial component of the test, a local government owner or operator must meet several criteria. First, local governments that have outstanding general obligation bonds must satisfy a bond rating requirement. Those local governments without outstanding bonds may substitute three financial ratios for the bond rating requirement. The local government must prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments (GAAP). Finally, a local government is not eligible to use the financial test if: (1) It is in default on any outstanding general obligation debt; (2) has outstanding general obligation bonds rated less than investment grade; (3) operates at a deficit equal to 5 percent of total annual revenue in the past two fiscal years; or (4) receives an adverse opinion or disclaimer on their financial statement. Each requirement of the financial component is discussed below. A more detailed discussion is available in the docket for this rulemaking, both in the Background Document and in a document entitled "Supplementary Information—Development of the Local Government Financial Test."

a. Bond rating requirement (Section 258.74(f)(1)(i)(A)). In order to satisfy this portion of the financial test, a local government must have a current investment grade bond rating (i.e., Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's) on all outstanding general obligation bonds. Further, as indicated below in the discussion of proposed § 258.74(f)(iii), a local government with outstanding general obligation bonds that do not meet the bond rating requirement in § 258.74(f)(1)(A) would not be eligible to use the financial test.

The Agency is proposing these requirements because it believes that a local government's bond rating incorporates an evaluation of its financial management practices. Bond ratings are widely used as a measure of credit risk associated with a long-term general obligation debt instrument. The Agency has included bond rating measures in financial tests under other RCRA programs, including financial assurance requirements for subtitle C TSDFs and subtitle I underground storage tanks. Further discussion of the bond rating requirement can be found in the docket for this rulemaking, both in the Background Document and in a document entitled "Supplementary Information—Development of the Local Government Financial Test."

b. Financial ratio alternative to the bond rating requirement (section 258.74(f)(1)(i)(B). As an alternative to the bond rating requirement, the Agency is proposing to allow a local government that does not have an outstanding general obligation bond rating to satisfy this portion of the financial test by passing three financial ratios: (1) A liquidity ratio, (2) a debt service ratio, and (3) a use of debt ratio. The Agency is providing this alternative because it recognizes that not all local governments possess bond ratings.

(1) *Development of the financial ratio alternative.* In developing the ratios for this component of the local government financial test, the Agency relied upon literature and studies in the area of local government finance to select measures that would serve as the indicators of a local government's financial health. First, the Agency collected measures from a variety of public finance literature related to local government financial health. Second, the Agency qualitatively analyzed these measures and eliminated those that could not be calculated easily from the financial statements of local governments, analyzed based on available data, or otherwise used because they were clearly less supported than similar measures. Third, the Agency quantitatively analyzed the remaining measures and eliminated them if the relationship between the measure and financial health appeared random, the measures and associated thresholds could not differentiate among local governments, the measures were highly sensitive to small changes in the threshold value, or the measures were highly correlated with other measures that evaluated the same aspect of local government financial health. Finally, from the remaining measures, the Agency selected those ratios and thresholds that were best substantiated in the public finance literature. The Agency selected a liquidity ratio (cash plus securities/total expenditures), debt service ratio (annual debt service/total expenditures), and a use of borrowed funds ratio (long-term debt issued/capital expenditures).

(i) *The liquidity ratio (section 258.74(f)(1)(i)(B)(1).* The liquidity ratio is defined as the sum of cash and securities divided by total expenditures and is designed to measure the degree to which an entity has cash or other assets that can quickly be converted to cash available to meet its current or upcoming expenses. Liquidity is essential to meet current obligations or execute transactions, and can provide an important cushion to protect funds intended for upcoming expenses against unexpected or emergency costs that arise on short notice. The Agency believes that any local government, even a wealthy one, could be forced to delay or even default on its MSWLF obligations if it failed to maintain sufficient liquid assets. In particular, the Agency is concerned that local governments facing a shortage of cash may be forced to delay or cut back services, and could be unable to conduct required closure, post-closure, and corrective action in a timely manner.

The Agency believes it is important for local governments to possess liquidity to meet current and unexpected obligations. Local governments with unusually low liquidity may have difficulty meeting current obligations and be unprepared for unexpected obligations. Under these circumstances, even a local government with low or no debt service might have difficulty obtaining funds quickly. Institutions that lend money are less likely to do so under these circumstances unless the local government can demonstrate that there will be a sufficient change in the management of its funds such that the loan can be paid back. The Agency is concerned that a local government experiencing difficulty meeting its obligations at a particular time may have even more difficulty in the future meeting its environmental obligations as they become current. Based on the analytical approach summarized above and described in more detail in the Background Document and in a document entitled "Supplementary Information—Development of the Local

Government Financial Test," the Agency is proposing that local governments must have a liquidity ratio value of at least 0.05 in order to pass this ratio. Both documents can be found in the docket for today's rulemaking. The Agency solicits comments on the appropriateness of this threshold value, together with supporting information.

(ii) *The debt service ratio (section 258.74(f)(1)(i)(B)(2).* The debt service ratio is defined as annual debt service divided by total expenditures and measures local government debt service as a percentage of total expenditures. Debt service is the amount of principal and interest due on a loan in a given time period. Debt service represents a fixed expense that cannot be reduced by government planners except by prepayment or refinancing. High debt service significantly reduces the resources available to fund current operating expenses, the flexibility to fund unexpected needs, and the ability to obtain additional loans or issue additional debt. The Agency believes that local governments that are overly burdened by debt service payments may have greater difficulty paying for assured activities in a timely fashion.

Possessing only low to moderate debt service is important for a local government so that it may retain flexibility in meeting its obligations. Even if a local government currently has high liquidity and can meet its current obligations, it may have difficulty in obtaining funds to meet longer term obligations. Institutions that lend money are less likely to do so under these circumstances unless the local government can demonstrate that there will be management of its funds that will result in a reduction of debt service. Based on the analytical approach summarized above and described in more detail in the Background Document and in a document entitled "Supplementary Information—Development of the Local Government Financial Test," the Agency is proposing that local governments must have a debt service ratio value of no greater than 0.20 in order to pass this ratio. Both documents can be found in the docket for today's rulemaking. The Agency solicits comment on the appropriateness of this threshold value, together with supporting information.

(iii) *The use of borrowed funds ratio (section 258.74(f)(1)(i)(B)(2).* The use of borrowed funds ratio is defined as long-term debt issued outstanding divided by capital expenditures and addresses a government's financial health by examining its use of debt. It is a common principle of public finance to match the "timing" of financing with the nature of expenditures. For example, it is generally considered most appropriate to pay for current operating costs from current revenue. In contrast, long-term debt may be appropriately used to finance projects with long-term benefits, such as construction of infrastructure or other capital stock. The Agency is concerned that if a local government is forced to use debt proceeds for short-term purposes, such as meeting payrolls or other current operating expenses, this could suggest that it is experiencing considerable financial distress and might be unable to fund assured obligations in a timely manner. Based on the analytical approach summarized above and described in more detail in the Background Document and in a document entitled "Supplementary Information—Development of the Local Government Financial Test," the Agency is proposing that local governments must have a use of borrowed funds ratio value of no greater than 2.00 in order to pass this ratio. Both documents can be found in the docket for today's rulemaking. The Agency solicits comment on the appropriateness of this threshold value, together with supporting information.

(iv) *Performance of the financial ratio alternative.* The Agency performed an analysis to determine the number of local governments that would pass this ratio-based alternative of the local government financial test. The Agency found that of all local governments that own or operate MSWLFs, 89.4 percent passed the debt service ratio, 96.5 percent passed the liquidity ratio, and 91.4 percent passed the use of borrowed funds ratio. The Agency estimates that 80 percent of local governments pass all three ratios. Further, the Agency found that the pass rate increases with local government size. The Agency solicits comments on these pass rates and the appropriateness of these values, together with supporting information.

c. Compliance with GAAP (section 258.74(f)(1)(ii). Today's proposed rule would require local governments using the financial test to prepare an annual financial report in compliance with Generally Accepted Accounting Principles (GAAP) for governments. The Agency believes that this requirement is necessary because the analysis of the financial test ratios was based on such ratios being derived from financial statements prepared according to GAAP, and that other forms of accounting would alter the results of the ratios. Under today's proposal, an approved State that wishes to use another form of accounting would have to develop its own financial test.

d. General obligation debt requirement (section 258.74(f)(1)(iii)(1) and (2). The Agency is proposing that local governments must not be either currently in default on any outstanding general obligation debt, nor have a rating on any outstanding general obligation bonds lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's. The Agency believes that local governments failing these conditions may be experiencing some financial hardship that would make them poor candidates for using a financial test. Thus, under today's proposal, a local government that satisfies the financial ratio alternative, but has a bond rating that would not satisfy the bond rating requirement would not pass the test.

e. Operating deficit limit (section 258.74(f)(1)(iii)(3). The Agency is proposing that local governments that have run an operating deficit greater than 5 percent in each of the past two years not be eligible to use the financial test. While the Agency recognizes that local governments may occasionally have small imbalances, it believes that a negative budget imbalance of greater than 5 percent in two or more consecutive years indicates that the local government may be experiencing some financial hardship. The Agency bases this belief on studies that it has examined that have indicated that local governments sustaining operating deficits of greater than 5 percent may be experiencing financial duress.

f. Adverse or qualified opinion (section 258.74(f)(1)(iii)(4). Today's proposal would require a local government that wishes to use the financial test to have its financial statements audited by an independent certified public accountant, or appropriate State agency that conducts equivalent comprehensive audits. The Agency is proposing that in unapproved states, local governments that receive an adverse opinion, disclaimer of opinion, or other qualified opinion not be eligible to use the financial test. However, the Agency is proposing that in approved states, the qualification can be considered on a case-by-case basis by the State Director. If the Director of the approved state, after evaluating the qualified opinion, deems the qualification insufficient to warrant disallowance of the financial test, the Director may allow use of the financial test.

2. Public Notice Component (Section 258.74(f)(2)

The public notice component of the local government financial test is intended to ensure that a local

government using the test acknowledges the obligations it is seeking to assure and that the community decision makers are aware of and agree to the commitment of future local government funds. To comply with this public notice requirement, a local government must, in each year that the financial test or guarantee is used, identify the assured costs in either its budget or its comprehensive annual financial report. While the Agency is not specifying a particular format for including this information, the specific facility covered, the categories of expenditure (e.g., closure, post-closure care), the corresponding cost estimate, and the anticipated year of the required activity must be recorded.

If the assured obligation is to be included in the budget, it should either be listed as an approved budgeted line item (if the obligation will arise during the budget period) or in an appropriate supplementary data section (if the obligation will not arise during the budget period). If the information is to be included in the comprehensive annual financial report, the Agency anticipates that it would, in most cases, be included in the financial section as a footnote to the annual financial statements.

3. Recordkeeping and Reporting Component (Section 258.74(f)(3)

As discussed above, today's proposed rule would require local governments using the financial test to prepare an annual financial report in compliance with Generally Accepted Accounting Principles (GAAP) for governments. In addition, in order to confirm that the self-implementing requirements of the proposed test have been met, today's rule would require local governments to document their use of the test by placing four items, which are described below, in the facility operating record. In addition, owners and operators would be required to update these items annually, and to notify the State Director and obtain alternative financial assurance if the local government is no longer able to pass the financial test.

It should be noted that these provisions of today's proposal contain timeframes for recordkeeping and reporting events. While owners and operators in unapproved States would have to meet these conditions, States with approved programs would be free to develop their own reasonable timeframes.

a. Chief financial officer (CFO) letter (section 258.74(f)(3)(i)(A). A letter to the facility's operating record must be signed by the local government's chief financial officer (CFO) and placed in the facility's operating record. The letter must demonstrate that the local government has complied with the financial component of the test and is not currently in default or running large operating deficits. The letter must list all cost estimates covered by the test and must provide evidence that the local government satisfies paragraph (f)(1)(i). The Agency expects that this evidence will include evidence of its bond rating or a worksheet or similar demonstration showing that the local government's annual financial data meet the specific measures required by the test. In addition, the CFO letter must certify that the local government has met the other conditions described above: (1) That the local government's financial statements are prepared in conformity with GAAP for governments, (2) that the local government has not operated at a significant operating deficit in each of the past two fiscal years and, (3) that the local government is not in default on any outstanding general obligation bonds, and does not have outstanding general obligation bonds rated less than investment grade. The Agency has not included specific wording for the CFO letter in today's proposed rule. Approved States implementing a Part 258 MSWLF program, however, may wish to consider requiring specific wording to facilitate compliance and review.

b. Year-end financial statements (section 258.74(f)(3)(i)(B). The second item to be placed in the operating record is the local government's independently audited year-end financial statements for the latest fiscal year, including the "unqualified opinion" (auditor's opinion contains no terms that qualify or condition his or her opinion that the statements are fairly stated in accordance with GAAP based on an audit) of the auditor who must be an independent, certified public accountant or an appropriate State agency that conducts equivalent comprehensive audits. The purpose of this opinion is to ensure that the data in the financial statements fairly represent the financial condition of the local government. In unapproved States, the opinion must be a "clean" or unqualified opinion. In approved States, however, State directors may chose to allow "qualified" opinions on a case-by-case basis. The appropriate State agency may substitute for the independent certified public accountant.

c. *Report from the independent certified public accountant or state agency (section 258.74(f)(3)(i)(C).* The third item to be placed in the operating record is the special report of the independent certified public accountant or State Agency upon examination of the chief financial officer's letter. In this special report, the accountant must confirm that the data used in the CFO letter to pass the test were taken directly, or appropriately derived from, the audited year-end financial statements. The special report must state that, in connection with that examination, no matters came to the accountant's attention that caused him to believe that the data in the CFO letter should be adjusted. The appropriate State agency that conducts equivalent audits may substitute for the independent certified public accountant.

d. Timeframes for recordkeeping events (section 258.74(f)(3)(ii) and (iv). Today's proposal would require owners and operators to place the items described above into the facility's operating record within specific timeframes. In the case of closure and post-closure care, these items must be placed in the operating record prior to the initial receipt of waste or the effective date of this rule, whichever is later, or in the case of corrective action, no later than 120 days following selection of a corrective action remedy.

It should be noted that these timeframes would be applicable in unapproved states. States with approved programs would be free to develop their own reasonable timeframes.

Under today's proposed § 258.74(f)(3)(iv), owners and operators would no longer be required to meet the recordkeeping requirements of the financial test when they substitute an alternate financial assurance mechanism or when they are no longer required to obtain financial assurance.

e. Annual updates of financial test documentation (section 258.74(f)(3) (iii) and (v). Because the financial condition of local governments can change over time, the local government financial test proposed today would require a local government to annually update all financial test documentation, including each of the items described above, within 90 days of the close of the local government's fiscal year. Local governments with fiscal cycles that are more than one year must update their estimate at least every 12 months based on an unaudited financial statements reviewed by an independent public accountant or a state agency and must also update the documentation based on audited information at the close of the fiscal cycle.

If the local government can no longer meet the terms of the financial test, the owner or operator must send notice to the State Director of intent to establish alternative financial assurance. This

notice must be sent within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide alternative financial assurance within 120 days after the end of such fiscal year.

4. Calculation of Costs to be Assured (section 258.74(f)(4)

a. The 43 percent threshold. Section 258.74(f)(4) of today's proposal would allow local governments to use the financial test to assure costs that equal up to 43 percent of the local government's total annual revenue. This provision is designed to maximize the availability of the local government financial test to financially sound local governments while, at the same time, assure that the costs that a local government seeks to assure are reasonable relative to its size. The Agency is proposing this provision because it believes that even a financially sound local government will not be able to meet environmental obligations that are very large relative to its size.

During the development of this proposal, the Agency considered incorporating a relative financial strength ratio into the financial test. Owners and operators would have been required to meet this financial strength ratio or they would have been ineligible to use the financial test to assure any of the costs associated with their facilities.

The Agency rejected the "pass-fail" approach of the relative financial strength ratio because it recognized that many local governments that were otherwise fiscally sound would be disqualified because they could not assure 100 percent of the costs required. This would, in particular, disqualify smaller local governments. On the other hand, the Agency also believed that the size of the local government relative to its environmental obligations was a fundamental factor that must be considered by the financial test in order for it to effectively ensure the availability of adequate funds to address environmental needs. The Agency believed that where the costs of closure, post-closure, and corrective action associated with a MSWLF are large relative to the financial size of the community, the local government, regardless of its financial condition, may not be able to meet those obligations on its own.

To address these concerns, the Agency developed the approach proposed in this rule. Today's proposed approach considers the same factors as the relative financial strength ratio (assured costs/total annual revenue) but does not eliminate local governments from using the test. Rather, under this proposal, the total annual revenue of a local government determines what portion of its obligations it can assure through the financial test. Based on the analysis it conducted to develop the relative financial strength ratio, the Agency is proposing that those obligations be limited to an amount equal to 43 percent of the local government's total annual revenue.

During the development of this provision, the Agency conducted an analysis, which is summarized below. This analysis supports the Agency's proposal to allow local government's to assure costs that equal up to 43 percent of the local government's total revenue.

In selecting the 43 percent figure, the Agency made assumptions (based on public finance literature) about the percent of total revenues which, without unreasonable stress, a local government could devote annually to meet environmental obligations over a typical bonding period. First, the Agency assumed that the local government would spread the costs over 20 years. Using the same calculations that a bank would use to calculate the monthly payments on a homebuyer's mortgage, the Agency calculated the annual payment a local government would have to make on a 20-year loan at a 10 percent rate of interest to meet its assured costs. The Agency then assumed that those annual payments should be equal to a maximum of 5 percent of total annual revenue. Based on these assumptions, a local government could borrow an amount equal up to 43 percent of its total annual revenue, without unreasonable financial stress.

While the Agency realizes that a 10 percent interest rate does not reflect current interest rates, the Agency chose to use an interest rate that more closely reflects a long term average interest rate, believing that long term averages are likely to fluctuate less than interest rates taken at different points in time.

The Agency solicits comment on the analysis it conducted to determine the 43 percent threshold. Specifically, the Agency requests comment on using: (1) A long term average interest rate, (2) the interest rate in effect at the time of promulgation, (3) a short term average interest rate, or (4) a moving average interest rate. The Agency also solicits comment on periodically revising the threshold value of this ratio (e.g., recalculating on an annual basis, every 5 years, or another timeframe). Finally, the Agency solicits comment on sources for determining the interest rate, including but not limited to the "Daily Municipal Bond Index" as published in the Wall Street Journal.

A full discussion of the development of this provision can be found in the docket for today's rulemaking, both in the Background Document and in a document entitled "Supplementary Information—Development of the Local Government Financial Test" (see discussion of the relative financial strength ratio).

The Agency believes that this approach will allow many local governments to assure all of the closure, post-closure, and corrective action costs associated with their MSWLFs using the financial test. In addition, those local governments whose costs are large relative to their local government size, but who are financially sound and, therefore, would otherwise meet the requirements of the financial test, will be able to assure a portion of their obligations. They will be required to obtain a guarantee or one of the other available financial mechanisms only for the remainder of their obligations. Thus, the approach proposed by the Agency will save many local government owners and operators a significant portion of the costs associated with obtaining an alternate instrument.

For example, assume that a local government meets all of the other requirements of today's proposal and seeks to assure costs of $15 million but 43 percent of its total annual revenue equals only $10 million. Under today's proposal, that local government could use the financial test to assure for $10 million, and would be required to procure an alternate instrument for the remaining $5 million in costs. The amount assured through the financial test combined with the amount assured through the alternative instrument then would total to the required $15 million, and the cost to the owner or operator of procuring the alternative instrument would be lower than the cost of procuring that alternative instrument for the full $15 million amount.

The Agency estimates that 32 percent of all local governments that own or operate MSWLFs can use the financial test for all of their obligations and that of local governments with total annual revenues of over $2 million, 57 percent can pass for all of their Subtitle D obligations. The Agency solicits comments on the appropriateness of these pass rates, together with supporting information.

b. Accounting for other environmental obligations. Under several programs, the Agency currently allows the use of a financial test as a mechanism to demonstrate financial assurance for

environmental obligations. These include obligations for MSWLFs under 40 CFR part 258, hazardous waste treatment, storage, and disposal facilities under 40 CFR parts 264 and 265, petroleum underground storage tanks under 40 CFR part 280, UIC facilities under 40 CFR part 144, and PCB commercial storage facilities under 40 CFR part 761. Under each of those programs, the Agency requires that the owner or operator include all of the costs it is assuring through a financial test when it calculates its obligations. This policy prevents an owner or operator from using the same assets to assure different obligations under different programs.

The Agency believes that where an owner or operator is using a financial test to assure costs under more than one regulatory program, it is important to assure that all such assured costs are taken into account to determine the owner or operator's ability to meet those costs. Thus, consistent with Agency policy, § 258.74(f)(4)(ii) of today's proposal would require a local government using a financial test for its subtitle D obligations to also include those costs covered under other Agency programs when it calculates assured costs.

However, the Agency recognizes that costs associated with corrective action may be quite high. Under these circumstances, local governments may not be able to demonstrate financial responsibility for the full amount of these obligations. The Agency solicits comment on how to accommodate high corrective action costs.

B. Local Government Guarantee (Section 258.74(h))

Today's proposed rule would allow a local government to guarantee the costs of closure, post-closure and corrective action costs associated with a MSWLF owned by another local government or by a private business. The local government guarantor must promise to take responsibility for the obligations of the owner or operator if the owner or operator fails to do so and provide proof that it passes the financial test requirements.

Local governments may wish to guarantee those obligations for a variety of reasons. For example, in order to preserve its waste disposal options, a county may decide to provide a guarantee on behalf of another local government that owns or operates the MSWLF to which it sends waste. Alternatively, a local government may issue a guarantee to ensure proper closure of a nearby private facility or because of the nature of the relationship between itself and an owner or operator (e.g., the owner or operator may be a special district associated with the guarantor).

Today's rule proposes a mechanism by which local governments can guarantee the costs of a MSWLF owner or operator. The mechanism requires the guarantor to enter a contract promising to fund or fulfill the assured obligations (i.e., closure, post-closure care, or corrective action) if the MSWLF owner or operator fails to do so. In addition, the local government guarantor must provide appropriate documentation of the guarantee contract to the owner or operator, and must meet all requirements of the local government financial test. The terms of the guarantee contract must specify that, if the owner or operator fails to perform closure, post-closure care, or corrective action in accordance with the requirements of Part 258, the guarantor will do so or establish a trust fund as specified in § 258.74(a) in the name of the owner or operator. The required documentation must be placed in the operating record, in the case of closure and post-closure care, prior to the initial receipt of waste or the effective date of this rule, whichever is later, or in the case of corrective action, no later than 120 days following selection of a corrective action remedy. The financial test documentation from the guarantor must be updated annually, in accordance with the requirements of the local government financial test.

Today's proposal requires that guarantors agree to remain bound under this guarantee for so long as the owner or operator must comply with the applicable financial assurance requirements of subpart G of 40 CFR part 258, except that guarantors may cancel this guarantee by sending notice to the State Director and to the owner or operator. Such cancellation cannot become effective earlier than 120 days after receipt of such notice by both the State Director and the owner or operator.

If a guarantee is cancelled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the State Director, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the State Director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days following the close of the guarantor's most recent fiscal year, place evidence of the alternate assurance in the facility operating record, and notify the State Director.

If the local government guarantor no longer meets the requirements of the financial test, the owner or operator must, within 90 days following the close of the guarantor's fiscal year, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the State Director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days following the close of the guarantor's most recent fiscal year, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the State Director. While the proposed rule does not specify the required wording of the guarantee contract, an approved State implementing a part 258 program may wish to specify wording to ensure that the contract is valid and enforceable in that State and is consistent with the performance criteria for financial assurance mechanisms included in § 258.74(l). Such required wording could specify the guarantee contract terms described above, as well as any additional terms necessary under State law for a valid and enforceable contract.

C. Combination of Mechanisms (section 258.74(k)).

The Agency recognizes that in many cases owners and operators will need to use a combination of mechanisms to assure the costs associated with their MSWLFs. First, many MSWLFs are owned and operated by multiple parties. Second, in many cases, the owner or operator will be able to assure part, but not all, of its costs, and will need to obtain a guarantee for the remainder of the costs. In other cases, the owner or operator will be able to use the financial test for some but not all of its costs, and will need to obtain another instrument for the remainder. Thus, to increase flexibility and enhance the availability of the financial test to owners and operators, particularly small owners and operators, today's proposed rule would allow a combination of mechanisms to assure the costs associated with MSWLFs.

However, the proposed rule would limit the combination of mechanisms to those that require payment, rather than performance. The Agency is proposing this limitation because it believes that, in cases of default, it would be difficult to enforce a combination of a performance guarantee or performance bond with another mechanism due to the potential complexity of dividing the

required obligation to perform closure, post-closure care, or corrective action. The Agency believes that there will be difficulties in implementing multiple performance guarantees in that one guarantor may not begin performing his share of the closure, post-closure, or corrective action activities until another guarantor has performed his share of these activities. Another difficulty could be that guarantors may not agree about the amount of their share of the activities that they have agreed to perform. The Agency believes that it is much easier to implement payment guarantees in that each guarantor knows exactly how much it has agreed to place in the standby trust fund in the event that the owner or operator does not perform required activities. However, the Agency is soliciting comment on the combination of performance and/or payment guarantees.

V. Request for Comment on Allowing Owners and Operators to Discount Costs

The financial assurance requirements in many EPA program areas (e.g., RCRA subtitles C and D, TSCA PCBs) require owners and operators to calculate cost estimates in current dollars, and aggregate these estimates (even though these costs may be incurred many years in the future). Owners must obtain a financial responsibility instrument for at least the amount of this aggregated cost estimate. The RCRA regulations currently do not allow owners and operators to adjust this aggregated cost estimate to reflect the fact that these activities are scheduled to occur in future years.

The Agency has received many requests to allow owners and operators to meet the financial assurance requirements based on the present value of these future obligations. In a rulemaking petition submitted on February 16, 1990, the National Solid Wastes Management Association (NSWMA) recommended that the Agency allow firms to use a present value based on a discount rate to estimate their costs for post-closure care and for the extended care portion of corrective action. (The NSWMA petition can be found in the docket of today's rulemaking.) In addition, the Agency has received public comment making similar requests during the development of other financial-responsibility-related rules. The Agency recognizes that this is an issue of interest to many parties, and has reviewed and considered all comments received to date.

In general, the argument presented by commenters is, because these expenditures are scheduled to occur in the future (often many years in the future), a financial instrument for less than the aggregate costs (i.e. the "present value" of the aggregated costs) would pay off these expenditures in the future.[1] This is the case because there is a time dimension to the value of a monetary or financial instrument—$100 in hand today is worth more than a (guaranteed) promise to pay $100 in ten years. One hundred dollars invested today, for example, in a ten-year Treasury bond paying at an interest rate of 7 percent will pay back $197 ten years from now, assuming that interest is compounded continually.

The Agency has not, however, proposed to allow owners and operators to discount costs because the Agency remains unconvinced that by doing so it would assure that adequate funds will be available in a timely manner to perform required activities in the event that the owner or operator is unable or unwilling to perform these activities.

First, the Agency is concerned that for an approach based on discounting to be effective, it is important that the owner or operator be able to predict with certainty when the costs will incur. For example, an owner or operator who estimates that the closure costs of its MSWLF will be $10 million to occur 20 years in the future would only have to demonstrate financial responsibility for $2.6 million today, assuming a 7 percent discount rate. If that MSWLF unexpectedly has to close, it may not have sufficient resources to properly complete all closure activities since the amount of financial responsibility could be substantially less than the actual need.

Despite these concerns, the Agency is interested in allowing owners and operators to discount costs under the subtitle D program wherever it can do so and still assure that sufficient resources will be available to perform required activities. The Agency believes that discounting may be more applicable for some activities than others. For example, where the cost of an activity is known, the timing of the activity can be predicted with a greater degree of certainty, or where the activity takes place over an extended time period, it may be appropriate to discount costs. Although current regulations require owners to have the financial resources to carry out all closure and post-closure activities in one year, some activities, such as post-closure groundwater monitoring, can only be done over several decades. Therefore, even if a landfill must close unexpectedly, certain activities (like post-closure care) and the associated costs will still occur over a number of years in the future. EPA could allow owners to discount these costs in computing their obligations. However, where the timing and costs associated with an activity are not known, discounting may not be appropriate.

Because of its interest in allowing owners and operators to discount costs, and because of its concerns about allowing them to do so, the Agency solicits comment on the practice of discounting, and how it might be applied to the subtitle D program. The Agency specifically requests comment and supporting information on the following and on any other issues that commenters identify regarding discounting for MSWLF financial responsibility requirements:

(1) Selection of a discount rate. Possible options include short- or long-term interest rates, private, municipal or Treasury bonds, or some other measure of interest rate.

(2) Selection of a method that provides adequate assurance that funds will be available in the event of unexpected closure.

(3) Selection of a maximum time period over which costs may be discounted, e.g., 5, 10, 20, or 50 years.

(4) Selection of activities that may be appropriate for employing discounting, e.g., post-closure care when the costs and time period for performing this activity may be estimated with reasonable accuracy.

(5) Selection of a method that minimizes the potential complexities involved in administering and enforcing a program that allows discounting of costs.

Commenters should note that this request for comment is limited to whether discounting should be allowed for MSWLF financial assurance, and is not intended to open for comment other financial assurance regulations.

[1] In order to make comparisons between alternative financial instruments on capital investment decisions involving different streams of payments over time, financial analysts, economists, etc., calculate the "present value" of the alternatives. This method involves calculating in terms of current dollars using the interest rate—or discount rate—present value of a promised future receipt (or expenditure). For example, at a 7 percent interest rate, an investor would be indifferent between receiving $100 five years from now or receiving $71.30 today. The present value, then of the promise to pay $100 in five years (at a discount rate of 7 percent) would be $71.30. In much the same way, if the Agency allowed owners and operators to discount their future costs when they demonstrated financial responsibility, an owner or operator who had a $10 million closure scheduled to occur 20 years in the future could demonstrate financial responsibility for as little as $2.6 million today, assuming they could invest that amount at the same 7% interest (or discount) rate described above. The effect of discounting becomes more pronounced as the time period and discount rate increase.

VI. Relationship of Today's Proposed Financial Test to the Financial Test Proposed for Use by Local Government Owners and Operators of Underground Storage Tanks

On February 18, 1993, the Agency promulgated a financial test for use by local government owners and operators of underground storage tanks (USTs) under subtitle I of RCRA (see 58 FR 9026). The subtitle I criteria provide mechanisms for local governments to demonstrate financial responsibility to assure the costs of corrective action and third-party liability caused by releases from USTs. Local governments can demonstrate financial responsibility through a bond rating test, a worksheet test, or a guarantee from another government entity.

While today's subtitle D proposal includes a bond rating test, a ratio test, and a guarantee provision, the specific requirements differ from those promulgated under subtitle I. For example, under the subtitle I criteria, local governments can satisfy the financial responsibility requirements if they have issued $1 million or more total outstanding investment-grade general obligation bonds. Under today's proposed subtitle D test, local governments with investment-grade bonds can self-assure for up to the amount that equals 43 percent of the local government's total annual revenue. Thus, under today's proposal for subtitle D, local governments with investment-grade bonds will be able to self-assure for at least part, if not the full costs of closure and post-closure care.

In addition, the subtitle I worksheet test and the subtitle D ratio test differ. In both cases, EPA sought to design tests so that local governments without substantial outstanding bond issues can demonstrate sound fiscal health. Under the subtitle I program, the local government computes a weighted sum of six financial ratios and compares the result to a threshold value. Local governments can satisfy the financial responsibility requirements if the weighted sum exceeds the threshold. Local governments with worksheet scores below the threshold must provide an alternative financial guarantee or instrument (e.g., a trust fund) to meet the financial responsibility requirements. In contrast, the proposed subtitle D worksheet test has three financial ratios, each with a threshold value. A local government scores must satisfy each of these three ratios in order to self-assure; if the local government fails one ratio, it is not eligible for to self assure and must provide an alterative financial instrument to meet the financial assurance requirements.

During the development of this proposal, the Agency considered proposing the subtitle I local government financial test for the subtitle D program, rather than the financial test proposed today. The argument for doing so would be that the purpose behind the financial responsibility requirement is the same in both programs, that is, to ensure that adequate funds are available when needed, and that the criteria for measuring a local government's fiscal condition should be the same as well. Further, the Agency should use the same test for the two programs because consistency serves to simplify compliance with the financial responsibility requirements of different programs.

However, while the Agency generally strives to maintain consistency between programs, the Agency believes that there are important policy reasons to use a different test for the two programs, which outweigh the arguments discussed above. Basically, the Agency found that the difference in the size of the obligations under the two programs, and the difference in the certainty of those costs occurring support the use of different tests for the two programs. These differences, and the basis for the agency's decision to propose a different financial test for the subtitle D program, are discussed below. More detailed discussion of this issue can be found in the docket for today's rulemaking (see "Justification for the Development of Different Local Government Financial Tests Under subtitles D and I," July 12, 1990).

The subtitle D and I programs require owners and operators to assure for different kinds of costs. Subtitle D requires owners and operators to demonstrate financial responsibility for the costs of closure, post-closure care, and corrective action for known releases. However, subtitle I requires that demonstration only for damages due to an accidental release.

As a result, the first significant difference between the subtitle D and subtitle I financial responsibility programs is the size and range of the obligations to be assured. The obligations under subtitle I are expected to be small (ranging from $125,000 to $1 million per occurrence) relative to the costs of closure, post-closure care, and corrective action for known releases under subtitle D (ranging from $1 million to over $29 million).

The second notable difference is the certainty of the obligations. Since a release may or may not occur at an underground storage tank, the owner or operator of an underground storage tank may or may not incur the costs associated with a release. In contrast, the obligations under subtitle D are certain to occur, that is, the owner or operator of a MSWLF will incur the costs associated with closure and post-closure care of that landfill.

The Agency believes that the financial tests for the two programs should meet these different programmatic needs. Thus, to take into account the financial size of the local government relative to the obligations it seeks to assure because of the magnitude of the costs associated with MSWLFs, the Agency is proposing that a local government be allowed to assure costs up to an amount equal to 43 percent of its total annual revenue through the financial test. Since, in part, EPA is concerned that private bond rating agencies may also systematically omit future environmental liabilities from their analyses, local governments with investment-grade bonds must also pass this test. To assure that the financial test does not exclude small local governments, the approach proposed today would allow a local government that could not pass the test for all of its obligations to use the test to assure for part of those obligations.

For the reasons discussed above, the Agency is proposing a different approach for the subtitle D program from the approach adopted for the subtitle I program. However, recognizing the value of using one local government financial test across all Agency programs requiring demonstration of financial responsibility, the Agency requests comments on the use of the subtitle I test for the subtitle D program as well as the use of any other local government financial test that is a better predictor of financial strength and will assure that adequate funds are available for required activities. Commenters should submit information that supports their comments. In addition, the Agency also solicits comment on whether local governments (and the public) are more likely to set aside financial resources for a certain event (a MSWLF closure) than an uncertain event (an UST release). Finally, the Agency requests comment on the appropriateness, should the Agency decide to use a subtitle I approach, of modifying that test to allow owners and operators to assure for part of their obligations when they cannot self-assure for the full amount.

VII. State Program Approval

Section 4005(c) of RCRA requires that each State adopt and implement a "permit program or other system of prior approval and conditions"

adequate to assure that each facility that may receive HHW or SQG waste will comply with the revised MSWLF criteria. Each State must adopt and implement a permit program not later than 18 months after October 9, 1991. EPA is required to "determine whether each State has developed an adequate program" pursuant to section 4005(c).

EPA plans to propose a State/Tribal Implementation rule which will establish adequacy determination requirements and procedures for State MSWLF permit programs, including submission of a MSWLF permit program application. EPA also plans to propose to extend eligibility for MSWLF permit program approval to Indian Tribes. The statute, however, does not require these rules to be in place before EPA assesses the adequacy of any State or Tribal program.

As part of these rules, the Agency plans to include procedures for submitting revised applications for State and Tribal program adequacy determinations should a State or Tribe revise its permit program once deemed adequate. Program revision may be necessary when the pertinent Federal statutory or regulatory authority is changed, when State or Tribal statutory or regulatory authority or relevant guidance changes, or when responsibility for the State or Tribal program is shifted within the lead agency or to a new or different State or Tribal agency or agencies. These changes may require revision to a State's or Tribe's permit program application as well.

The statute does not establish any mandatory timeframes for submitting such modifications so the State or Tribal submission should be negotiated by the State or Tribal Director and the Regional Administrator. This arrangement should minimize potential disruption to ongoing program activities.

A State or Tribe that receives permit program approval prior to the final promulgation of today's rule and later elects to adopt the financial test and local government guarantee mechanisms should work with its respective Regional EPA office as it proceeds to revise its permit program. EPA does not interpret the statute to require that each and every program change a State or Tribe makes will require a revised permit program application. Rather, only certain changes that raise issues warranting a detailed review by EPA and an opportunity for public comment will necessitate a revised application. EPA believes that State and Tribal compliance with today's proposal will, in most cases, not require a revised permit program application, since this rule merely provides additional options for demonstrating financial responsibility. Furthermore, States and Tribes that have adopted adequate financial assurance requirements without this local government test and guarantee will not need to take any action since this proposal simply expands the number of options available to owners and operators for demonstrating financial assurance.

VIII. Implementation

Today's proposal follows the self-implementing framework of the revised criteria (see 56 FR 50978). Regardless of whether the program has received a determination of adequacy from EPA, owners and operators must comply with the State or Tribal program requirements. For example, if a State or Tribe does not allow a local government financial test or guarantee under its permit program, an owner or operator would not be able to use these options to comply with State or Tribal law.

It should be noted that the Agency believes that many tribes have an accounting structure similar or identical to those of most local governments. To the extent that tribes meet the requirements of the financial test proposed today, tribes would be able to demonstrate financial responsibility for their subtitle D obligations through the use of this test. However, there may be tribes and local government units that use an accounting system similar or identical to those of most corporations. They would be able to demonstrate financial responsibility for their subtitle D obligations through the use of the subtitle D Corporate Financial Test that the Agency will propose in a later rulemaking.

IX. Economic and Regulatory Impacts

A. Executive Order 12866

Under Executive Order 12866, EPA must determine the economic impact of a rule. The Agency conducted an analysis to estimate the costs that would be avoided if this local government financial test were available to municipalities, and determined that it would save local governments $138 million annually. The following discussion outlines and solicits comment on the Agency's analysis. A complete discussion of the Agency's analysis can be found in the docket for today's proposal.

The Agency selected a representative sample of local government owners and operators of MSWLFs and, using financial data related to those local governments, determined whether they would pass the ratio component of the financial test. Based on this sample, the Agency concluded that 80 percent of all local governments that own or operate a MSWLF would be able to use the ratio component of the financial test for at least some amount of their subtitle D obligations, while 32 percent of all local governments would be able to use the financial test for all their subtitle D obligations. The Agency did not have available the bond rating information related to its sample of owners and operators and, therefore, did not know whether the 80 percent pass rate would be significantly affected by the provision of this proposal that excludes local governments with bond ratings that are lower than investment grade. The Agency looked at information it had available, i.e., the bond ratings associated with a sample of local governments (not necessarily owners and operators of MSWLFs) and found that a very low percentage had lower than investment grade ratings. Based on this information, the Agency concluded that the 80 percent pass rate would not be significantly affected by the bond rating exclusion. The bond rating information is available in the docket for this proposal.

To calculate the cost savings associated with this rule, the Agency made several assumptions. First, the Agency used 1987 data to estimate the number of MSWLFs in the subtitle D universe, the costs of closure and post-closure care for those of MSWLFs, and the number of local governments. The Agency assumed that information has not changed since 1987, and the financial data of the municipalities has held constant as well. The Agency assumed that the costs of closure and post-closure care related to their MSWLFs were the local governments' only environmental obligations. The Agency further assumed that the cost of obtaining a third-party financial instrument, such as a letter of credit or surety bond, would be 1.5 percent of the cost estimate of closure and post-closure care of the MSWLF. Finally, the Agency assumed that all local governments that send their solid waste to a MSWLF would be willing to provide a guarantee to the local government owning or operating the MSWLF to the extent that they are able to provide that guarantee through the financial test. A full discussion of this analysis can be found in the docket for this rulemaking.

The Agency solicits comment on the information that was used to conduct its analysis, and on the assumptions described above. Further, the Agency solicits information that supports or refutes these assumptions.

Finally, when the Agency estimated the cost savings provided by today's rule, it did not have information regarding the number of local governments that have outstanding investment grade bonds. Therefore, the Agency's analysis was based on the ratio alternative and did not consider the savings that would be provided by the bond rating alternative. The Agency solicits information related to bond ratings, such as the number of communities that have bond ratings, the characteristics of those bonds, and the characteristics of those communities (particularly size as measured by total annual revenues) with bond ratings.

Section VI of this preamble discusses the possibility of adopting the subtitle I local government financial test for use in the subtitle D program. The preamble discusses the Agency's reasons for developing a different financial test for subtitle D, and solicits comment on whether the subtitle I test could be used for the subtitle D universe. The Agency will review all public comment it receives on this issue and, if significant public comment indicates that the subtitle I test could be applicable to the subtitle D universe, the Agency will conduct additional analysis to explore that option.

This proposed rule would not result in an adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule has been reviewed by the Office of Management and Budget in accordance with Executive Orders 12291 and 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* at the time an Agency publishes a proposed or final rule, it generally must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities, unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's rule adds a local government financial test and local government guarantee as two additional mechanisms that can be used to demonstrate financial responsibility for environmental obligations. Entities able to use these mechanisms would be allowed to demonstrate financial responsibility for their environmental obligations without incurring the costs of obtaining a third-party mechanism. Therefore, pursuant to 5 U.S.C. 605b, I certify that this regulation will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

OMB approved the information collection requirements of the MSWLF criteria, including financial assurance criteria, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 2050–0122. The burden estimate for the financial assurance provisions included the burden associated with obtaining and maintaining any one of the allowable financial assurance instruments, including a financial test.

The public may send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, PM–2136, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 728 Jackson Place NW., Washington, DC 20503 (marked "Attention: Desk Officer for EPA").

List of Subjects in 40 CFR Part 258

Environmental Protection, Financial assurance, Closure, Post-closure, Corrective action.

Dated: December 13, 1993.

Carol M. Browner,

Administrator.

40 CFR part 258 is proposed to be amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority citation for part 258 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6944(a), and 6949(c); 33 U.S.C. 1345(d) and 1345(e).

2. Section 258.74 is amended by removing and reserving paragraphs (e) and (g) and by revising paragraphs (f), (h), and (k) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(e) [reserved]

(f) *Local government financial test.* An owner or operator that satisfies the requirements of paragraphs (f) (1) through (3) of this section may demonstrate financial assurance up to the amount specified in paragraph (f)(4) of this section:

(1) *Financial component.* (i) The owner or operator must satisfy one of the following:

(A) If the owner or operator has outstanding general obligation bonds, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all outstanding general obligation bonds; or,

(B) If the owner or operator does not have outstanding general obligation bonds, it must satisfy each of the following financial ratios:

(*1*) A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(*2*) A ratio of annual debt service to total expenditures less than or equal to 0.20; and

(*3*) A ratio of long-term debt issued and outstanding to capital expenditures less than or equal to 2.00.

(ii) The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles for governments.

(iii) An owner or operator is not eligible to assure its obligations under this paragraph (f) if it:

(A) Is currently in default on any outstanding general obligation bonds,

(B) Has an outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's, or

(C) Operated at a deficit equal to five percent or more of total annual revenue in either of the past two fiscal years, or

(D) Receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate State agency) auditing its financial statement as required under paragraph (f)(1)(ii) of this section. However, the Director of an approved State may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the Director deems the qualification insufficient to warrant disallowance of the test.

(2) *Public notice component.* The local government owner or operator must place a reference to the closure, post-closure care, or corrective action costs assured through the financial test into its most recent comprehensive annual financial report or budget. The reference must be included before [the effective date of this section] or prior to the initial receipt of waste at the facility, whichever is later, in the case of closure and post-closure care, and, in the case of corrective action, not later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. The reference must include the amount of each cost-estimate and the year(s) in which the local government expects these costs to be incurred. References in the budget must occur as budgeted line items if the activities are to occur in the

period covered by the budget, but may appear in a supplemental data section if the activities will not occur until after the period covered by the budget.

(3) *Recordkeeping and reporting requirements.* (i) The local government owner or operator must place the following items in the facility's operating record:

(A) A letter signed by the local government's chief financial officer that:

(*1*) Lists all the current cost estimates covered by a financial test, as described in paragraph (f)(2) of this section;

(*2*) Provides evidence and certifies that the local government meets the conditions of either paragraph (f)(1)(i) or (f)(1)(ii) of this section; and

(*3*) Certifies that the local government meets the conditions of paragraph (f)(4) of this section.

(B) The local government's independently audited year-end financial statements for the latest fiscal year, including the unqualified opinion of the auditor who must be an independent, certified public accountant or an appropriate State agency that conducts equivalent comprehensive audits; and

(C) A report to the local government from the local government's independent certified public accountant or the appropriate State agency stating that:

(*1*) The certified public accountant or State agency has compared the data in the chief financial officer's letter with the owner's or operator's independently audited, year-end financial statements for the latest fiscal year; and

(*2*) In connection with that examination, no matters came to his attention which caused him to believe that the data in the chief financial officer's letter should be adjusted.

(ii) The items required in paragraph (f)(3)(i) of this section must be placed in the facility operating record as follows:

(A) In the case of closure and post-closure care, either before [the effective date of this section], or prior to the initial receipt of waste at the facility, whichever is later, or

(B) In the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of § 258.58.

(iii) After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and place the updated information in the operating record within 90 days following the close of the owner or operator's fiscal year.

(iv) The local government owner or operator is no longer required to meet the requirements of paragraph (f)(3) of this section when:

(A) The owner or operator substitutes alternate financial assurance as specified in paragraph (f)(3)(v) of this section; or

(B) The owner or operator is released from the requirements of this section in accordance with § 258.71(b), § 258.72(b), or § 258.73(b).

(v) A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it must, within 120 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this section, place the required submissions for that assurance in the operating record, and notify the State Director that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(vi) The Director of an approved State, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the Director of an approved State finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternate financial assurance in accordance with paragraph (f)(3)(v) of this section.

(4) *Calculation of costs to be assured.* The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under this paragraph (f)(4) is determined as follows:

(i) If the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

(ii) If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR part 280, PCB storage facilities under 40 CFR part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR parts 264 and 265, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure under this paragraph (f)(4). The total must not exceed 43 percent of the local government's total annual revenue.

(iii) The owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in paragraphs (f)(4) (ii) and (iii) of this section.

(g) [reserved].

(h) *Local government guarantee.* An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by §§ 258.71, 258.72, and 258.73, by obtaining a written guarantee provided by a local government. The guarantor must meet the requirements of the local government financial test in paragraph (f) of this section, and must comply with the terms of a written guarantee.

(1) *Terms of the written guarantee.* The guarantee must be effective before the initial receipt of waste or before the effective date of this section, whichever is later, in the case of closure, post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. The guarantee must provide that:

(i) If the owner or operator fails to perform closure, post-closure care, and/or corrective action of a facility covered by the guarantee, the guarantor will:

(A) Perform, or pay a third party to perform, closure, post-closure care, and/or corrective action as required; or

(B) Establish a fully funded trust fund as specified in paragraph (a) of this section in the name of the owner or operator.

(ii) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the State Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the State Director, as evidenced by the return receipts.

(iii) If a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the State Director, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the State Director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days following the close of the guarantor's fiscal year, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the State Director.

(2) *Recordkeeping and reporting.* (i) The owner or operator must place a certified copy of the guarantee along with the items required under paragraph (f)(3) of this section into the facility's operating record before the initial receipt of waste or before [the effective date of this section], whichever is later, in the case of closure, post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

(ii) The owner or operator is no longer required to maintain the items specified in paragraph (h)(1) of this section when:

(A) The owner or operator substitutes alternate financial assurance as specified in this section; or

(B) The owner or operator is released from the requirements of this section in accordance with § 258.71(b), 258.72(b), or 258.73(b).

(iii) If a local government guarantor no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must, within 90 days following the close of the guarantor's fiscal year, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the State Director. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days.

* * * * *

(k) *Use of multiple mechanisms.* An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by §§ 258.71, 258.72, and 258.73, by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance, rather than payment, may not be combined with other instruments. The mechanisms must be as specified in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care and/or corrective action may be provided by a combination of mechanisms, rather than a single mechanism.

* * * * *

[FR Doc. 93–31098 Filed 12–23–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[OCC–031–P]

RIN 0938–AF98

Medicare Program; Retroactive Enrollment and Disenrollment in Risk Health Maintenance Organizations and Competitive Medical Plans

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would specify additional circumstances under which we would make retroactive adjustments in payment for certain enrollees in health maintenance organizations (HMOs) and competitive medical plans (CMPs) with Medicare risk contracts. The rule would also provide for retroactive disenrollment of Medicare enrollees of risk HMOs and CMPs under certain circumstances. The first change would implement section 4204(e) of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90). The retroactive enrollment provision would ensure that a Medicare risk HMO or CMP is not penalized if there is a delay of up to 90 days between the time that a beneficiary enrolls in the HMO or CMP through an employer group health benefits plan and the time that the HMO or CMP is informed of the enrollment and notifies HCFA. The second change establishes an administrative mechanism to protect certain Medicare enrollees that are enrolled in a Medicare risk HMO or CMP against liability if they obtain out-of-network services without authorization. Payment by either the HMO or CMP or by Medicare would normally be precluded in that situation. However, if we determine that a Medicare enrollee did not make a fully informed decision to enroll, a disenrollment request was not properly processed, or the enrollee has lost the capacity to understand the limitations on services and can be deemed to have requested disenrollment, retroactive disenrollment would be considered.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 25, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: OCC–031–P, P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OCC–031–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–690–7890).

If you wish to submit comments on the information collection requirements contained in this proposed rule, you may submit comments to: Allison Herron Eydt, HCFA Desk Officer, Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tracy Jensen, (202) 619–2158.

SUPPLEMENTARY INFORMATION:

I. Background

A. Retroactive Enrollment

Section 1876 of the Social Security Act (the Act) provides that enrollees who are entitled to Medicare benefits under both parts A and B or under only part B may elect to receive those benefits through either a health maintenance organization (HMO) or a competitive medical plan (CMP) that has entered into a risk contract with us.

Some Medicare beneficiaries who enroll in HMOs and CMPs are already enrolled in health benefit plans sponsored by their or their spouse's employers, or former employers. Although we process each enrollment in a Medicare risk HMO or CMP on an individual basis, an HMO or CMP may act as an intermediary between us and employer group enrollees. The former employer often pays all or a portion of the monthly premium to the HMO or CMP and is responsible for informing the HMO or CMP that the Medicare enrollee has enrolled in a risk plan. The HMO or CMP then notifies us. For purposes of discussion in this proposed rule, we use the term "Medicare enrollee" to mean a Medicare

beneficiary enrolled in a Medicare risk HMO or CMP. However, when it is not clear about the beneficiary's status as an enrollee in an HMO or CMP we use the term "beneficiary".

Most employers report these Medicare enrollments to HMOs or CMPs after the requested effective date, often with delays of as much as 3 months. Despite these delays, employers expect HMOs or CMPs to make Medicare enrollment effective as of the requested date (as the HMO or CMP does for non-Medicare eligible employees). For non-Medicare enrollees, the employer retroactively furnishes the capitation payments that are due to the HMO or CMP for the earlier months, and the HMO or CMP accepts responsibility for providing medical care to the enrollee as of the requested effective date. However, Medicare currently enrolls beneficiaries in HMOs or CMPs only prospectively and could not pay the HMO or CMP retrospective capitation payments. Thus, unless the HMO or CMP bills Medicare on a fee-for-service basis, the plan forgoes Medicare payment until the Medicare enrollment is reflected in our records. While Medicare payment is easily arranged for certain services (such as hospital services), some HMOs or CMPs do not have the administrative systems to bill on a fee-for-service basis for outpatient or ancillary services. Essentially, this forces an HMO or CMP to absorb costs for ambulatory care until the Medicare enrollee is officially enrolled. This risk serves as a disincentive for HMOs or CMPs to enroll Medicare enrollees through employer groups.

Section 4204(e) of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) amended section 1876(a)(1)(E) of the Act. Section 1876(a)(1)(E)(ii)(I) authorizes the Secretary to make retroactive adjustment of capitation payments to risk HMOs or CMPs to reflect enrollments in the HMO or CMP that occurred up to 90 days earlier through a health benefit plan operated, sponsored, or contributed to, by an enrollee's employer or former employer (or the employer or former employer of the enrollee's spouse). Section 1876(a)(1)(E)(ii)(II) requires, as a condition for retroactive adjustment, that an enrollee certify that he or she was provided with the explanation required by section 1876(c)(3)(E) of the Act at the time of enrollment in the HMO or CMP through the employee group health benefits plan. Section 1876(c)(3)(E) requires that the HMO or CMP furnish each enrollee, at the time of enrollment and not less frequently than annually thereafter, an explanation of the enrollee's rights under section 1876, including an explanation of—

- The enrollee's rights to benefits from the HMO or CMP;
- The restrictions on Medicare payments for services furnished other than by or through the HMO or CMP;
- Out-of-area coverage provided by the HMO or CMP;
- The HMO's or CMP's coverage of emergency services and urgently needed care; and
- Enrollee appeal rights.

For purposes of a retroactive enrollment adjustment under section 1876(a)(1)(E)(ii)(I), a beneficiary is considered to be enrolled in the Medicare risk HMO or CMP at the time that the employer group health benefit plan receives both the enrollment application and the beneficiary's certification, that the explanation required under section 1876(c)(3)(E) was received.

B. Retroactive Disenrollment

Section 1876(c)(3)(B) of the Act establishes procedures for Medicare enrollees to disenroll from HMOs or CMPs that have contracts with us. Regulations at 42 CFR 417.460 provide that a Medicare enrollee may disenroll through a social security office or by giving the HMO or CMP a signed, dated request. The enrollee may request a specific disenrollment date, but it may not be any earlier than the first day of the month following the month the request is received by the HMO or CMP. An HMO or CMP must furnish the beneficiary with a copy of the written disenrollment request, and an HMO or CMP that contracts on a risk basis must also furnish a written statement explaining that benefits must be received through the HMO or CMP until the effective date of the termination. Our responsibility to pay the HMO or CMP ends upon termination of the beneficiary's enrollment in the health plan.

Current regulations provide for disenrollment on a prospective basis only, usually at the request of the beneficiary. The beneficiary may not actually be disenrolled any earlier than the first day of the month following the date on which the disenrollment request was received by the HMO or CMP. Section 417.460(a) generally prohibits an HMO or CMP from encouraging or requesting that an enrollee disenroll. However, regulations at § 417.460 identify a limited number of situations in which an HMO or CMP may initiate disenrollment procedures. These situations include when a beneficiary—

- Fails to pay premiums;
- Moves out of the service area;
- Fails to convert from a cost contract (under section 1876(h) of the Act) to a risk contract;
- Commits fraud or abuse; or
- Loses Part B entitlement.

An HMO or CMP may also initiate disenrollment procedures "for cause" if a beneficiary's behavior is disruptive, unruly, or uncooperative to the extent that continued membership would seriously impair the HMO's or CMP's ability to furnish services to the beneficiary or to other enrollees. If an HMO or CMP initiates the disenrollment, appropriate notification, including an explanation of the enrollee's right to a hearing under the HMO's or CMP's grievance procedures, must be given to the beneficiary.

"For cause" disenrollments must be fully documented by the HMO or CMP, and we must determine whether the disenrollment requirements have been met. If we decide to permit disenrollment by the HMO or CMP, the effective date of disenrollment is the first day of the calendar month following notification to the enrollee.

There are three situations in which we consider retroactive disenrollment from a Medicare risk HMO or CMP to be an appropriate option to protect the Medicare enrollee. In each of these situations, retroactive disenrollment determinations are based on the specific facts of each case. The three situations follow:

- *Processing Errors.* Retroactive adjustments may be made if a Medicare enrollee properly requests a disenrollment, but the request is not processed on a timely basis. The statute gives these enrollees an unqualified right to disenroll, effective the first of the month following the date the request is made. We believe this right should not be affected by administrative errors or negligence on the part of HCFA, SSA, the HMO or CMP, or an employer. A common example is an enrollee who submits a termination request through his or her employer, but whose HMO doesn't receive the request in time to process the disenrollment before the requested termination date. Unlike other Medicare enrollees for whom Medicare is the sole health care insurer, Medicare enrollees who are simultaneously covered under retiree health plans generally make disenrollment elections through the former employer and not directly to the HMOs or CMPs. It is an employer's responsibility to furnish information to an HMO or CMP concerning an enrollee's health plan elections, but this is not always done on a timely basis. In this example, although the enrollee made the election to disenroll and understood that he or she

would not be an enrollee of the HMO or CMP as of a certain date, according to our records the enrollee is still enrolled in the HMO or CMP and subject to the "lock-in" restriction (requiring that most services be obtained through the HMO or CMP). Other examples of processing errors would include the following:

—HCFA's Hospital Insurance records are not current and the enrollee's Medicare eligibility is not on record
—SSA has not accurately entered the disenrollment
—SSA record errors are reflected in HCFA records
—The plan transposes a beneficiary Health Insurance Claim number and transmits the erroneous information to HCFA

• *Invalid enrollment.* If an enrollee never intended to enroll, or did not make a fully informed decision to enroll in an HMO or CMP, this could be grounds for retroactive disenrollment. It is necessary that the enrollee be retroactively disenrolled as of the date of enrollment in order for the proper payment to be made and for our records to be corrected. Indications of an invalid enrollment may include a beneficiary's—

—Inquiry to us questioning enrollment upon receipt of the lock-in notice;
—Failure to pay any premiums to the HMO or CMP;
—Continuing supplemental (Medigap) insurance coverage after the effective date of HMO or CMP enrollment; or
—Enrolling in a supplemental insurance program immediately after enrolling in the HMO or CMP.

Note: Section 1882(d)(3)(A) of the Act prohibits an insurer from knowingly issuing a supplemental health insurance policy to a Medicare beneficiary if the policy duplicates existing coverage. The insurer may rely on information about other sources of coverage provided by the beneficiary as part of the application. Therefore, determination of the validity of a beneficiary's enrollment in an HMO or CMP, for the purpose of retroactive adjustment, may be based in part on the information that the beneficiary includes or omits from the Medicare supplemental insurance application.

Another situation that may constitute an invalid enrollment, depending on the specific circumstances, is illustrated by the following example: A beneficiary enrolls in an HMO or CMP in September 1991 and pays a $50 premium each month, but he or she does not use the HMO's or CMP's providers. In November 1991, the beneficiary enters a hospital not affiliated with the HMO or CMP to have major surgery that has not been authorized by the HMO or CMP. The hospital and physicians submit $25,000 in claims to Medicare, but the claims are denied. Since the enrollee is locked-in to the HMO's or CMP's providers, the claims are sent to the HMO or CMP. When the HMO or CMP notifies the beneficiary that the services were not covered and that he or she is financially responsible for the full cost of the services, the beneficiary expresses surprise and confusion and claims that he or she did not know that there were lock-in and preauthorization requirements. If, based on available evidence, we determine that the enrollee had never understood the requirements and had not made an informed decision to enroll or to abide by the HMO's or CMP's rules, the enrollee may be retroactively disenrolled as of the date of enrollment, and the bills processed through fee-for-service Medicare.

• *Incapacitation.* If beneficiaries properly enroll in an HMO and at some later point become incapable of understanding the lock-in restrictions or other HMO rules. One example of incapacity might be generalized disorientation exhibited by an enrollee who has been using plan providers for 2 or 3 years and then suddenly begins to regularly use non-plan providers. Another instance when an incapacitated beneficiary might be a candidate for retroactive disenrollment would be when he or she demonstrates an inability to understand HMO rules by failing to pay premiums even after explicit notification and collection efforts. (Current regulations permit HMOs and CMPs to initiate disenrollment for non-payment of premiums, but there is no authority to require plans to take action against delinquent beneficiaries.) In these situations, beneficiaries may be financially liable for unauthorized, nonemergency services provided by out-of-plan providers. To prevent such liability in the case of incapacitated beneficiaries, retroactive disenrollment determinations may be made by the Secretary on a case-by-case basis.

Although retroactive disenrollments are not specifically authorized by statute, section 1876(c)(3)(B) of the Act states in part:

> An individual * * * may terminate his enrollment * * * as of the beginning of the first calendar month following the date on which the request is made for such termination (or, in the case of financial insolvency of the organization, as may be prescribed by regulations) or, in the case of such an organization with a reasonable cost reimbursement contract, as may be prescribed by regulations.

The phrase "as may be prescribed in regulations" gives us the authority to prescribe the manner in which an enrollee may disenroll from an HMO or CMP that has a cost contract or has become insolvent. However, with respect to the manner in which an enrollee may disenroll from an HMO or CMP with a risk contract, the statute specifies that an enrollee may terminate enrollment in an HMO or CMP prospectively "as of the beginning of the first calendar month following the date on which the request is made for such termination". Thus, our authority with respect to disenrollment from a risk HMO or CMP is not as flexible.

However, we believe that we may interpret the phrase "the date on which the request is made" (to disenroll) to afford some relief in this situation. For example, if a person went to a nonplan provider, we can make a determination of whether that person should be deemed to have made a request for disenrollment. If, on a case-by-case basis, we determine that there was earlier out-of-plan services or that there was another basis for deeming that the person had previously requested disenrollment, the enrollee can be disenrolled following the date that the request to disenroll is made.

We will review each retroactive disenrollment request to determine whether the evidence supports a retroactive adjustment. Disenrollments are expected to be infrequent and are considered to be exceptions to normal HMO and CMP enrollment and disenrollment practices. If we identify a pattern of cases referred to us for retroactive disenrollments, we may initiate a review of an HMOs or CMPs marketing practices and enrollment policies.

II. Provisions of the Proposed Regulations

In § 417.448 ("Restriction on payments for services received by Medicare enrollees of risk HMOs or CMPs."), we would revise paragraph (c) to provide uniform terminology and, we would revise paragraph (d) to stipulate that, if an enrollee disenrolls or is retroactively disenrolled by us, the effective date for the end of restriction on payments is the first day of the month that the disenrollment is effective, as provided in § 417.461(d) or § 417.462(b), regarding disenrollment by the enrollee or retroactive disenrollment. For enrollees who leave the HMO's or CMP's geographic area, the restriction ends the first day of the first month following the month in which the enrollee notifies the HMO or CMP that he or she has left the area, as required by § 417.436(a)(9).

In § 417.450 ("Effective date of coverage."), we would amend paragraph (b) by adding a new paragraph (3), which would state that, if notice of enrollment through an employer health benefits plan is delayed, and the risk HMO or CMP meets the conditions for payment specified in § 417.584(e), coverage may be effective, on the date requested by the beneficiary or up to 90 days before we receive the notice of enrollment, whichever is later, provided the risk HMO or CMP meets the conditions for payment as specified in § 417.584(e).

In § 417.456, ("Refunds to Medicare enrollees."), we would amend paragraph (f) to include a reference to the proposed new paragraph (g). The new paragraph (g) would state that an HMO or CMP must refund premiums, deductibles, or copayments collected from an enrollee during the period that we grant retroactive disenrollment. If the HMO or CMP is entitled to collect from the enrollee Medicare deductible and coinsurance amounts for services furnished during the period of retroactivity, it may offset the amounts it may collect against the amounts it must refund. The HMO or CMP must make refunds in lump sum payment to the former enrollee or to his or her representative within 1 month of the date of our notice to the plan.

In § 417.460 ("Disenrollment of beneficiaries at termination of payments to an HMO or CMP."), we would revise paragraph (a) and remove paragraphs (b) and (c). We would redesignate paragraph (a)(1) as new paragraph (c). We would add a new paragraph (b) to specify the bases for disenrollment. Generally, an HMO or CMP may disenroll a Medicare enrollee if he or she fails to pay the required premiums or other charges, commits fraud or permits abuse of his or her enrollment card, or behaves in a manner that seriously impairs the ability of the HMO or CMP to furnish services to the particular enrollee or other enrollees. Generally, an HMO or CMP must disenroll a Medicare enrollee if he or she moves out of the service area served by the HMO or CMP, fails to convert to the risk provisions of the HMO's or CMP's Medicare contract, loses entitlement to Medicare Part B benefits, or dies. Specific requirements, limitations, and exceptions applicable to disenrollment are set forth in paragraphs (c) through (i) of § 417.460.

We would revise redesignated paragraph (c)(1)(i) to require that an HMO or CMP make a reasonable effort to collect overdue premiums from the enrollee before taking an involuntary disenrollment action. The reasonable effort must include sending the beneficiary a notice of delinquency within 15 days of the premium due date warning that nonpayment of premiums does not constitute disenrollment and explaining that the enrollee is still locked-in until the enrollment is officially terminated. The HMO or CMP may terminate the beneficiary's enrollment if the beneficiary does not pay the premium within 45 days of the date the delinquency notice is sent by the HMO or CMP.

This provision is intended to minimize the need for retroactive disenrollments and protect beneficiaries from out-of-plan service expenses. In the past, Medicare beneficiaries have stopped paying premiums with the expectation that they would be automatically disenrolled and returned to fee-for-service Medicare. In some cases, the HMO or CMP did not disenroll the beneficiaries, even though the HMO or CMP was permitted under the regulations to begin involuntary disenrollment procedures. These beneficiaries began using non-HMO or non-CMP providers, and the claims were subsequently denied by Medicare. We propose to require HMOs and CMPs to initiate disenrollment procedures to reduce instances when beneficiaries, who believe they are no longer enrollees and use non-plan providers, are liable for cost of those services. Requiring plans to give the beneficiary notice and wait at least 45 days before terminating enrollment, would ensure that the beneficiary has ample opportunity to indicate a desire to remain enrolled in the HMO or CMP.

We would revise redesignated paragraph (c)(2)(ii) to make a conforming change. This paragraph currently states that disenrollment is effective no earlier than the month immediately after, and no later than the third month after, the month that we receive the disenrollment notice in acceptable form. We would add the phrase "except as provided in § 417.462 for retroactive disenrollment".

We would move provisions from § 417.460(b) regarding disenrollment by the enrollee to new § 417.461. Paragraph (a) states that a Medicare enrollee may disenroll at any time by giving the HMO or CMP a signed, dated request in the form and manner prescribed by the HMO or CMP. The enrollee may request a certain disenrollment date, but unless we grant a retroactive disenrollment in accordance with § 417.462, the effective disenrollment date may be no earlier than the first day of the month following the month in which the HMO or CMP receives the request.

New paragraph (d)(2), which would state that, in the case of a retroactive disenrollment under § 417.462, our responsibility for payment to the HMO or CMP is limited to only those months that the enrollee is shown on our corrected records as having been enrolled in the HMO or CMP.

We would add a new § 417.462 ("Retroactive disenrollment."). In paragraph (a), we would set forth the following three conditions for retroactive disenrollment:

- There was a valid request for disenrollment but, negligence or administrative error by HCFA, SSA, the employer who sponsors the employee health benefits plan, or the HMO or CMP, delayed timely processing of the request.
- There was never a valid enrollment. If we determine that a beneficiary had not made a fully informed decision to enroll in an HMO or CMP (for example, had enrolled without understanding the HMO's or CMP's rules and restrictions), he or she may be retroactively disenrolled. Examples of indications of an invalid enrollment are if no premiums were ever paid to the HMO or CMP, if the beneficiary continued to pay for supplemental coverage, or if the beneficiary never used the HMO's or CMP's providers.
- There was a valid enrollment but the beneficiary later became incapable of understanding the lock-in restriction and other rules and could be considered to have requested disenrollment.

In paragraph (b) of the proposed § 417.462, we would set forth rules regarding the effective dates of retroactive disenrollment as follows:

- If an error or negligence delayed processing a valid request, disenrollment is effective as of the first day of the month that it would have been effective if the error or negligence had not occurred.
- For retroactive disenrollments made because there was never a valid enrollment, the effective date of the disenrollment is the initial enrollment date.
- If the beneficiary has become incapable of understanding the rules, disenrollment is effective as of the first day of the month after the month in which we determine that the beneficiary can be considered to have requested disenrollment.

We would redesignate § 417.460(c) concerning the effect of termination or default of the contract between HCFA and an HMO or CMP as new § 417.464.

In § 417.584, ("Payment to risk HMOs and CMPs."), we would revise the section title and add a new paragraph (e) that would state that, if a beneficiary

enrolls in a risk HMO or CMP through an employer health benefits plan we might not be notified of the enrollment until the requested enrollment date has passed. We may make payments retroactive to the requested enrollment date, or 90 days before receipt of the notice, whichever is later, provided the HMO or CMP obtains and keeps on file a statement signed by the enrollee indicating that he or she received the information required under § 417.436 including an explanation of the following:

- All services except emergency and urgently needed out-of-area services must be obtained through the HMO or CMP.
- The cost of services (other than emergency and urgently needed out-of-area services) that are not authorized by the HMO or CMP are not paid by the employer or the HMO or CMP or under the Medicare fee-for-service system and are the responsibility of the enrollee.

We would also specify that the HMO or CMP must reimburse us for Medicare fee-for-service payments it received for furnishing services to the enrollee during the period for which payment is adjusted.

III. Information Collection Requirements

Regulations at § 417.584(e)(1)(ii) contain information collection or recordkeeping requirements or both that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The information collection requirements are imposed on the HMO or CMP. The HMO or CMP is required to obtain and keep on file a statement signed by the enrollee indicating that he or she received the information required under § 417.436 pertaining to membership rules for enrollees. The respondents who will furnish the information would be enrollees of HMOs and CMPs. Public reporting burden for this collection of information is estimated to be negligible. Assuming that the membership rules specified under § 417.436 are currently distributed by HMOs and CMPs to employer group plan clients, the only additional requirement is that the beneficiary's certification of receipt of that information at the time of enrollment is retained by the HMO or CMP. A brief directive from HMOs and CMPs to employer group plans should be adequate to facilitate collection and transmittal of information required under § 486.584. A notice will be published in the Federal Register after approval is obtained. HMOs or CMPs and enrollees desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "ADDRESSES" section of this preamble.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

VI. Regulatory Impact Statement

Executive Order 12866 (E.O. 12866) requires us to prepare an analysis for any document that meets one of the E.O. 12866 criteria for a "significant regulatory action"; that is, that may—

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all risk HMOs and CMPs are considered to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would conform Medicare regulations to section 1876(a)(1)(E) of the Act, which was amended by section 4204(e) of OBRA '90. Section 4204(e) of OBRA '90 permits payments to a risk HMO or CMP to be retroactively adjusted to reflect enrollments in the HMO or CMP through an employer group health benefits plan that occurred up to 90 days earlier. This proposed rule would also set forth certain provisions regarding retroactive disenrollment, allowing us to make administrative adjustments when errors are discovered.

There are currently 1.6 million beneficiaries enrolled in Medicare risk HMOs and CMPs, some of whom could be affected by this proposed rule. Historically, the annual number of retroactive enrollments is very small. During a 3-month period in 1992, there were 1,441 beneficiaries enrolled retroactively, but only 7 percent of those had claims activity prior to being officially enrolled in a Medicare risk plan. Because some managed care HMOs or CMPs are not set up to bill on a fee-for-service basis, this proposed rule could result in retroactive capitation payments to HMOs and CMPs that were forgoing Medicare fee-for-service payments. HMOs or CMPs that were billing and receiving fee-for-service payments would be required to reimburse or offset any fee-for-service payments. This regulation would create additional work and costs for the intermediaries and carriers. Since the number of retroactive enrollments and disenrollments is small, we believe the additional costs to the intermediaries and carriers would be minimal. We estimate the additional total expenditures, including additional costs to Medicare carriers and intermediaries, would be approximately $5 million annually for fiscal years 1994 through 1998.

We believe that the impact of retroactive disenrollment adjustments would be negligible because of the relatively small number of beneficiaries affected and our ability to adjust the capitated payments to HMOs and CMPs retroactively.

This proposed rule would not meet the $100 million criterion nor would it meet the other E.O. 12866 criteria. Therefore, this proposed rule is not a significant regulatory action under E.O. 12866, and a regulatory impact analysis is not required.

This proposed rule would increase payments to those HMOs and CMPs that were not set up to bill on a fee-for-service basis and consequently absorbed the costs for ambulatory services until the Medicare beneficiary was officially

enrolled and the HMO started to receive capitation payments. Because the number of retroactive enrollments and disenrollments is low, this proposed rule would have a limited effect on HMOs and CMPs. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act since we have determined, and the Secretary certifies, that this proposed rule would not result in a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Grant programs-health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMOs), Loan programs-health, Medicare, Reporting and recordkeeping requirements.

We are proposing to amend 42 CFR part 417 as set forth below:

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

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102, 1833(a)(1)(A), 1861(s)(2)(H), 1866(a), 1871, 1874, and 1876 of the Social Security Act (42 U.S.C. 1302, 1395l(a)(1)(A), 1395x(s)(2)(H), 1395cc(a), 1395hh, 1395kk, and 1395mm); sec. 114(c) of Pub. L. 97–248 (42 U.S.C. 1395mm note); 31 U.S.C. 9701 and secs. 215 and 1301 through 1318 of the Public Health Service Act (42 U.S.C. 216 and 300e through 300e-17), unless otherwise noted.

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

2. In § 417.448, paragraphs (c) and (d) are revised to read as follows:

§ 417.448 Restriction on payments for services received by Medicare enrollees of risk HMOs or CMPs.

* * * * * *

(c) *End of restriction.* The restriction on payments imposed by paragraph (a) of this section ends if a Medicare enrollee meets one of the following conditions:

(1) Is disenrolled according to § 417.460, § 417.461, or § 417.462.

(2) Leaves the HMO's or CMP's geographic area for an extended period as defined in § 417.460(a)(2) and the HMO, CMP and enrollee make arrangements for membership to continue as provided in § 417.460(a)(2)(iv).

(d) *Timing.* For enrollees that are disenrolled, the effective date for the end of the restriction on payments, as discussed in paragraph (c) of this section, is the first day of the month in which termination of enrollment is effective as provided in § 417.460, § 417.461, or § 417.462. For enrollees who leave the HMO's or CMP's geographic area, the restriction ends the first day of the first month following the month in which the enrollee notifies the HMO or CMP that he or she has left the area, as required by § 417.436(a)(9).

3. Section 417.450 is amended by adding a new paragraph (b)(3) to read as follows:

§ 417.450 Effective date of coverage.

* * * * *

(b) *Exceptions.* * * *

(3) If an individual enrolls through an employer health benefits plan, but notice to HCFA is delayed, coverage may be effective on the date requested by the beneficiary or up to 90 days before HCFA receives the notice of enrollment, whichever is later, provided the risk HMO or CMP meets the conditions for payment as specified in § 417.584(e).

* * * * *

4. In § 417.456, paragraph (f) is revised, and a new paragraph (g) is added, to read as follows:

§ 417.456 Refunds to Medicare enrollees.

* * * * *

(f) *Reduction by HCFA.* If the HMO or CMP does not make refund in accordance with paragraphs (b) through (d) and (g) of this section by the end of the contract period following the contract period during which an amount was determined to be due an enrollee, HCFA reduces its payment to the HMO or CMP by the amount incorrectly collected or otherwise due and arranges for the amount to be paid to the Medicare enrollee.

(g) *Refund in the case of retroactive disenrollment.* An HMO or CMP must refund premiums, copayments, and any other cost-sharing amounts collected from the enrollee, in accordance with § 417.454(a)(1), during the period for which HCFA grants retroactive disenrollment. If the HMO or CMP is entitled to collect from the enrollee Medicare deductible and coinsurance amounts for services furnished during the period of retroactivity, it may offset the latter against the amounts it would otherwise be required to refund. The HMO or CMP must make refunds in lump sum payment to the former enrollee or to his or her representative within 1 month of the date of HCFA's notice to the plan.

5. Section 417.460 is revised to read as follows:

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

(a) *General rule.* Except as provided in paragraphs (b) through (i) of this section, an HMO or CMP may not—

(1) Disenroll a Medicare beneficiary; or

(2) Orally or in writing, or by any action or inaction, request or encourage a Medicare enrollee to disenroll.

(b) *Bases for disenrollment: Overview.* (1) Generally, an HMO or CMP may disenroll a Medicare enrollee if he or she meets any of the following conditions:

(i) Fails to pay the required premiums or other charges.

(ii) Commits fraud or permits abuse of his or her enrollment card.

(iii) Behaves in a manner that seriously impairs the ability of the HMO or CMP to furnish services to the particular enrollee or other enrollees.

(2) Generally, an HMO or CMP must disenroll a Medicare enrollee if he or she meets any of the following conditions:

(i) Moves out of the area served by the HMO or CMP.

(ii) Fails to convert to the risk provisions of the HMO's or CMP's risk contract.

(iii) Loses entitlement to Medicare Part B benefits.

(iv) Dies.

(3) Specific requirements, limitations, and exceptions applicable to disenrollment are set forth in paragraphs (c) through (i) of this section.

(c) *Failure to pay premiums*—(1) *Basic rules.* (i) An HMO or CMP must make a reasonable effort to collect premiums or other charges imposed for deductible or coinsurance amounts for which the enrollee is responsible.

(ii) A reasonable effort includes a written notice to the enrollee within 15 days of the date that the delinquent charges were due to the HMO or CMP. The written notice must include the following:

(A) Notification that nonpayment of premiums will not automatically result in disenrollment.

(B) Information about how to disenroll from the HMO or CMP, including submitting a written request for disenrollment to the plan or disenrolling in person at a social security office.

(C) Information about the lock-in requirements of the plan, including a warning to the enrollee that he or she may be liable for health care expenses if services are not obtained through the plan service network.

(iii) The HMO or CMP may not involuntarily disenroll a Medicare enrollee if payment for premiums or other charges is received within 45 days of the date that the notice described in paragraph (c)(1)(ii) of this section is sent to the beneficiary.

(2) *When HCFA's liability ends.* Except as provided in § 417.462 for retroactive disenrollment, disenrollment is effective no earlier than the month immediately after, and no later than the third month after, the month in which HCFA receives the disenrollment notice in acceptable form.

6. Section 417.461 is added to read as follows:

§ 417.461 Disenrollment by the enrollee.

(a) *Enrollee's request.* (1) A Medicare enrollee may disenroll at any time by submitting a signed, dated request in the form and manner prescribed by the HMO or CMP.

(2) The enrollee may request a particular disenrollment date but, unless HCFA authorizes retroactive disenrollment in accordance with § 417.462, that date may be no earlier than the first day of the month following the month in which the HMO or CMP receives the request.

(b) *Responsibilities of the HMO or CMP.* The responsibilities of the HMO or CMP include the following:

(1) Submit a disenrollment notice to HCFA promptly.

(2) Provide the enrollee with a copy of his or her request for disenrollment.

(3) In the case of a risk HMO or CMP, provide the enrollee with a statement explaining that—

(i) Enrollment continues until the effective date of disenrollment; and

(ii) The payment restrictions specified in § 417.448(a) continue to apply until that date.

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

(d) *When HCFA's responsibility for payment ends.* (1) HCFA's responsibility for payments to the HMO or CMP ends no earlier than the month immediately after the month in which HCFA receives the disenrollment notice in acceptable form.

(2) In the case of retroactive disenrollment under § 417.462, HCFA's responsibility for payment to the HMO or CMP is limited to only those months in which the individual is shown on HCFA's corrected records as having been enrolled in the HMO or CMP.

7. A new § 417.462 is added, to read as follows:

§ 417.462 Retroactive disenrollment.

(a) *Bases for retroactive disenrollment.* HCFA may grant retroactive disenrollment if it determines that any of the following situations exist:

(1) There was a valid request for disenrollment but, through error or negligence by HCFA, SSA, the employer who sponsors the employee health benefits plan, or the HMO or CMP, the request was not processed timely.

(2) There was never a valid enrollment, that is, the beneficiary never made a fully informed decision to enroll in the HMO or CMP. (For example, the beneficiary enrolled without understanding the rules and restrictions that apply to enrollees.) Indications of lack of understanding and, therefore, of an invalid enrollment include the following patterns of behavior by the beneficiary:

(i) Failing to pay premiums or other charges imposed by the HMO or CMP.

(ii) Continuing to pay for supplemental coverage insurance.

(iii) Failing to use the providers and suppliers affiliated with the HMO or CMP.

(3) There was a valid enrollment but HCFA determined that the beneficiary later became incapable of understanding the lock-in restriction and other rules.

(b) *Effective date of retroactive disenrollment.* The effective date of retroactive disenrollment is as follows:

(1) If error or negligence delayed processing a valid request, disenrollment is effective as of the first day of the month for which it would have been effective if the error or negligence had not occurred.

(2) If there was never a valid enrollment, disenrollment is effective as of the initial enrollment date.

(3) If the beneficiary has become incapable of understanding the rules, disenrollment is effective as of the first day of the month after the month in which HCFA determines that the beneficiary can be considered to have requested disenrollment.

10. Section § 417.464 is added, to read as follows:

§ 417.464 Effect of termination or default of contract.

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

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

(1) Determine the month in which its liability for payments ends; and

(2) Notify the HMO or CMP and all affected Medicare enrollees as soon as practicable.

Subpart P—Medicare Payment: Risk Basis

11. In § 417.584, the headings of the section and of paragraph (c) are revised, and a new paragraph (e) is added, to read as follows:

§ 417.584 Payment to risk HMOs and CMPs.

* * * * *

(c) *Adjustments to payments: General rule.*

* * * * *

(e) *Adjustments to payments: Special requirements for delayed notice of enrollment.* If a beneficiary enrolls in a risk HMO or CMP through an employer health benefits plan, HCFA might not be notified of the enrollment until the requested enrollment date has passed. HCFA may make payments retroactive to the requested enrollment date or 90 days before receipt of the notice, whichever is later, provided the HMO or CMP meets the following requirements:

(1) Obtains and keeps on file a statement signed by the enrollee indicating that he or she received the information required under § 417.436 concerning membership rules for enrollees, including an explanation of the following:

(i) All services except emergency and urgently needed out-of-area services must be obtained through the HMO or CMP.

(ii) The cost of services, other than emergency and urgently needed out-of-area services, that are not authorized by the HMO or CMP are not paid by the employer or the HMO or CMP or under the Medicare fee-for-service system and are the responsibility of the enrollee.

(2) Reimburses HCFA for Medicare fee-for-service payments it received for services covered by the HMO or CMP and furnished to the enrollee during the period for which HCFA adjusts the payments.

(Catalog of Federal Domestic Assistance Programs No. 93.773, Medicare-Hospital Insurance, and 93.774, Medicare—Supplementary Medical Insurance.)

Dated: June 30, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 30, 1993.

Donna E. Shalala,

Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 3

[MD Docket No. 93–297; FCC 93–502]

Administration of Accounting Authorities in Maritime Mobile and Maritime Mobile-Satellite Radio Services

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This Notice of Proposed Rulemaking establishes rules and regulations relating to the administration of accounting authorities in the maritime mobile and maritime mobile-satellite radio services except for distress and safety communications. The rules are required in order to ensure adherence to international settlement procedures.

DATES: Comments must be filed on or before February 3, 1994 and reply comments must be filed on or before February 18, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Shirley F. Wood, Financial Analysis Branch, Telephone: (202) 632–1027.

SUPPLEMENTARY INFORMATION:

The Establishment of Commission Rules concerning the Administration of Accounting Authorities in the Maritime Mobile and the Maritime Mobile-Satellite Radio Services Except for Distress and Safety Communications.

Adopted: November 19, 1993
Released: December 17, 1993
Comment Date: February 3, 1994
Reply Comment Date: February 18, 1994
By the Commission:

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I. Introduction

1. By this action we propose to establish regulations for the administration of accounting authorities in the maritime mobile and the maritime mobile-satellite radio services except for distress and safety communications. We seek comment on the proposals set forth here as well as alternative proposals that commenters may have.

II. Background

2. International telecommunications settlements involve the collection and payment by various accounting entities of charges due foreign administrations for messages transmitted at sea by or between maritime mobile stations located on board ships subject to U.S. registry and utilizing foreign coast and coast earth station facilities. The United States Government has performed accounting settlements for maritime mobile service message charges since 1913 and, more recently, for maritime mobile-satellite service messages. Under the provisions of Service Regulation XXXVI of the Berlin-Telegraph Convention of 1906 and the London Radiotelegraph Conference of 1912, to which the U.S. is a signatory, each Administration is required to provide for the collection of all tolls for the radiotelegraph traffic exchanged with stations of other Administrations. The proceedings of the London Convention Final Protocol (Part II Treaty Series, No. 58) were ratified by the Senate on July 8, 1913.

3. To comply with its treaty obligation, it became necessary for the U.S. to establish a clearinghouse to maintain accounts with each foreign administration concerned and with U.S. flag vessels operating in international or foreign waters. In accordance with Article XLII of the Service Regulations affixed to the London Conference, the Department of Commerce was authorized by the Senate to enforce all radio laws of the U.S. as well as the provisions of the Conference of 1912. By agreement between the Secretary of War, the Secretary of Commerce and the Secretary of State on March 19, 1913, the Navy Department was authorized to handle the settlement of international radio accounts.

4. On July 1, 1924, by authority of the General Appropriation Act of the Department of Commerce, FY 1925 (43 Stat. 220, Pub. L. 68–153—Title III), the personnel and equipment of the International Radio Accounting Unit, Navy Department, together with all outstanding accounts owed to foreign administrations were transferred to the Bureau of Navigation, Department of Commerce.

5. On February 23, 1927, the Radio Division of the Bureau of Navigation, where the international radio accounts due foreign administrations were being processed, was transferred from the Bureau of Navigation and put directly under the supervision of the Secretary of Commerce by the Radio Act of 1927 (Pub. L. 69–632). The Radio Division was subsequently abolished on July 10, 1932, and its duties, powers, personnel, equipment and records were transferred to the Federal Radio Commission by authority of Public Law 72–212 and by Executive Order 5892. The international radio accounts were, by this authority, put under the jurisdiction of the Federal Radio Commission where they remained until 1934.

6. On June 10, 1934, the Federal Radio Commission was absorbed by the Federal Communications Commission, which had been created by the Communications Act of 1934. Title VI, section 603 and section 604 of the Act provided for the transfer of all employees, records, property, authorities and appropriations from the Federal Radio Commission to the Federal Communications Commission. At that time the international radio accounts were transferred to the jurisdiction of the Commission, where they are now maintained.

7. The subjects of international telecommunications accounting and settlements are addressed in the International Telecommunication Convention (Nairobi, 1982), in the International Telecommunication Regulations (Melbourne, 1988) (ITR), in the ITU Radio Regulations and in the CCITT Recommendations.[1] The CCITT develops technical, operational and service recommendations applicable to essentially all international telecommunications services via wire and radio. Provisions of Conventions and Regulations have treaty status and are therefore binding on the parties thereto. The CCITT Recommendations do not have treaty status and are not legally binding. However, as a practical matter, the CCITT Recommendations are effectively the standards that govern international telecommunications.[2]

[1] "CCITT" is the French acronym for the International Telegraph and Telephone Consultative Committee within the International Telecommunication Union (ITU). "CCITT" is nevertheless the recognized acronym used in most languages—including English.

[2] At the ITU Additional Plenipotentiary Conference (APP) in Geneva (December 1992), the structure, working methods, and construct of the basic ITU treaty instrument were modified. The result from this is that the names of the sub-entities

Continued

8. Historically, most international settlements were handled solely between individual ship owners and foreign administrations or coast stations. This meant that, in most countries, there were literally thousands of addresses to which administrations would have to forward their invoices. A major exception was within the U.S. where the FCC had acted as a nationwide clearing house for the settlement of accounts since its inception in 1934.

9. The World Administrative Radio Conference (Geneva, 1979) changed the procedures governing accounting practices in the maritime mobile and maritime mobile-satellite services, partly in response to the perceived need to improve the efficiency of the international telecommunication settlements system. The Final Acts of the Conference, ratified by the U.S. Senate on October 27, 1983, revised Chapter IX of the International Radio Regulations by establishing a new Article 66 which set forth the following general principles to govern the international accounting for public correspondence in the maritime mobile and maritime mobile-satellite services:

5086 Section 2. Changes for radio communications from ship to shore shall in principle, and subject to national law and practice, be collected from the maritime mobile station licensee:

5087 (a) by the administration that has issued the license; or

5088 (b) by a recognized private operating agency; or

5089 (c) by any other entity or entities designated for this purpose by the administration referred to in No. 5087.

10. The Mobile World Administrative Radio Conference in 1987 passed a resolution (contained in the Regulations as Resolution No. 334) providing that the provisions of Article 66 should merely refer to the International Telecommunication Regulations (ITR), assuming that the World Administrative Telegraph and Telephone Conference (WATTC–88) placed the substance of the Article 66 provisions into the ITR. The WATTC–88 did incorporate these provisions into the ITR (effective July 1, 1990). We assume a future competent Radiocommunication Conference will eventually implement the provisions of Resolution No. 334. In any event, both the current Radio Regulations and the ITR provide that the CCITT Recommendations are to be taken into account when applying the international regulatory provisions. As it now stands, the implementing recommendations developed by the CCITT include:

(1) Rec. D.90 on charging, accounting and refunds;

(2) Rec. D.195 on settlement of international telecommunication balances of accounts;

(3) Rec. E.200 on operational provisions for maritime mobile services;

(4) Rec. F.100 on mobile operational provisions; and

(5) the newest recommendation adopted, Rec. F.111 on principles of service for mobile systems.

11. The organization within the FCC responsible for the settlement of maritime mobile and maritime mobile-satellite accounts with foreign administrations is the International Telecommunications Settlements (ITS) Section of the Financial Management Division, Office of Managing Director. The settlement operation basically consists of examining and processing invoices received from foreign administrations to ensure the validity of the charges and, in turn, billing U.S. shipowners for the charges due the foreign country. The accounts generally contain the ship call sign and name, the date the message was transmitted, the number of words or minutes, the cost per word or minute in gold francs or Special Drawing Rights (SDRs) and the amount due shown in either gold francs or SDRs. Collections are then processed and appropriate payments made to the foreign countries or their agents through the U.S. Treasury. The Commission, as one of 15 Accounting Authorities currently recognized by the FCC, expects to process 340,000 separate charges from as many as 100 entities during the next twelve months, with estimated collections totaling $12.0 million. The settlement clearinghouse service was performed by the FCC at no cost to licensees until December 19, 1989 when Pub. L. 101–239 established a $2.00 per line item administrative fee applicable to all ITS billings.

12. The FCC, in accordance with international procedures described infra, has also permitted private entities, called "accounting authorities", to settle accounts between U.S. registered ships and foreign administrations just as the Commission does. (See In The Matter of Accounting and Operating Procedures in the Maritime Mobile Service, FCC 80–741, Mimeo No. 28600 (released December 12, 1980).) In addition, the accounting authority may settle accounts of foreign licensed vessels either exclusively or in addition to settling U.S. accounts. Vessel operators/licensees choosing to have these private entities settle their accounts and generally also charged a fee under some sort of contractual arrangement. In certain cases, the vessels are owned and/or operated by the same company that is acting as an accounting authority.

13. Accounting authorities have been established or certified by the Commission in accordance with the procedures delineated in the CCITT Recommendations. Those procedures allow administrations to establish up to 25 accounting authorities per country. Specifically, accounting authorities are designated by the assignment of an Individual Accounting Authority Identification Code (AAIC). This code is used by ships and foreign coast stations to identify where charges for messages transmitted through foreign facilities are to be sent for collection. All accounting authorities approved by the Commission to settle maritime accounts for U.S. licensed vessels are assigned a discrete four-character alpha-numeric code. Accounting authorities operating in the U.S. are assigned codes with a "US" prefix. Currently, only eight codes beginning with the prefix US are authorized, including US01 which is used by the Commission's ITS Section in its settlement activities.[3] Foreign-based accounting authorities may also be certified to settle accounts of U.S. licensed vessels. If approved, they use the AAIC originally assigned to them by their country of origin. The Commission has currently certified seven foreign-based accounting authorities[4] to settle accounts for U.S. flag vessels. Although all certifications have technically been interim certifications, twelve years have elapsed since the original interim assignments.

14. Because the entities authorized AAICs by the Commission have generally been cooperative with the FCC

of the ITU will change (e.g., the CCITT will become the Telecommunication Standardization Sector—TSS and the primary treaty instruments will become the ITU Constitution and the ITU Convention (with consequential renumbering of all provisions. We note that the changes coming from the APP were placed into provisional effect on March 1, 1993; however, since the formal entry into force of these changes is not until July 1, 1994 (as between those ITU Member countries who have ratified or acceded to the new instruments), we will refer to the familiar, existing ITU nomenclatures and documents for convenience and ease of understanding in this instant proceeding.

[3] Besides the FCC, the other Accounting Authorities assigned a "US" code are: Mackay Communications, Inc.; Radio-Holland, USA; SAIT Communications, Inc.; Mobile Marine Radio, Inc.; Exxon Communications Company; Raytheon Service Company and Global Communications, Inc.

[4] The following foreign companies have been approved as Accounting Authorities: Kelvin Hughes Ltd (England); Peninsular Electronics Ltd (England); STC International Marine, Ltd. (England); Marconi International Marine Co., Ltd. (England); E.B. Communications Ltd (England); International Radio Traffic Services (Ireland) and ANDgate Ltd. (Gibraltar).

and are familiar with maritime accounting issues, the Commission has had few problems with accounting authorities that have not been resolved satisfactorily. We believe, however, that the responsibilities of accounting authorities should be spelled out and that their settlement activities should be monitored to ensure applicable international procedures are being followed.

15. There are currently no rules, formal guidance or procedures issued by the Commission for determining who should be certified as an accounting authority. There are no FCC standards of conduct for accounting authorities nor any requirement to keep the Commission informed of their activities. There are no rules to ensure that the overall United States settlement activity is pursued in accordance with established procedures. We believe that at least minimal regulations should be in place to assist current and future accounting authorities in adhering to those international procedures as a matter of public interest and in fulfillment of U.S. treaty interests.

16. To that end, this Notice proposes rules that would establish an application and approval process of becoming and accounting authority to ensure that only qualified applicants perform this function. The application process and procedural rules would also apply to entities currently settling accounts under interim Commission certification. The interim certification will be canceled 60 days after the effective date of these rules if these entities do not follow the application process. The Notice also proposes standardized operational procedures and reporting mechanisms that would assist the Commission in monitoring the overall settlement function. The proposed rules declare an FCC rule for using the accounting authority's receipt date of accounts for purposes of determining the appropriate conversion rate for the Special Drawing Rights (SDRs). The proposed rules also establish procedures to govern situations where an accounting authority is not operating in accordance with Commission or established international procedures.

17. The Notice proposes rules to ensure compliance in situations where the licensee fails to remit proper and timely payment for public correspondence communications to the Commission or to another accounting authority. Finally, the proposed rules declare that the ship station licensees are *ultimately liable* for the proper and timely payment of public correspondence communications.

III. General Discussion of the Proposed Rules

18. Eligibility. We propose that U.S. citizenship requirements not be imposed on accounting authorities. We propose, instead, certain restrictions regarding the physical location of accounting authority settlement facilities for those accounting authorities wishing to be assigned an Accounting Authority Identification Code with a "US" prefix. These sections also make it clear that prior experience in accounting or settlement activities will be considered but is not a prerequisite to becoming an accounting authority. Applicants must be willing and able to accept clients at a reasonable charge; must agree to settle accounts in both gold francs and Special Drawing Rights (SDRs) and to use the conversion rate mandated by the International Monetary Fund; and must agree to conduct operations in accordance with applicable FCC policies and rules, the International Telecommunication Regulations and other international rules, regulations, agreements, and, where appropriate, CCITT Recommendations. Finally, these sections require that all entities intending to settle accounts of U.S. licensed vessels obtain prior Commission authorization to do so.

19. Application Procedures. The proposed rules require the filing of an original FCC application form in order to be considered as an accounting authority. We have attempted to keep the application form simple and streamlined, yet comprehensive enough to provide sufficient information on which to base a decision as to whether to certify an applicant as an accounting authority. The proposed rules request only basic information identifying the applicant and describing the applicant's objectives and capabilities with respect to the accounting authority function. To ascertain the latter, we are requesting that any relevant experience of an applicant be detailed and that the applicant's proposed settlement plans be provided. To obtain basic information about the applicant, we are requesting information regarding the proposed structure of the applicant's settlement business and similar background data which, in combination with our request for documents demonstrating financial responsibility, should provide an adequate basis for determining whether to issue a certification.

20. We propose to process applications on a first-come, first-served basis. However, the Commission is proposing to "grandfather" all current accounting authorities as long as they are otherwise qualified and follow the procedures established by the rule to obtain permit accounting authority authorizations. Existing accounting authorities are not exempt from the new application procedures and would be required to apply for permanent accounting authority certifications within 60 days of the affective date of these rules or risk losing their status as accounting authorities.

21. The proposed rules establish an FCC policy that a minimum of 15 of the available 25 Accounting Authority Identification Codes (AAICs) be reserved for use by accounting authorities conducting settlement operations in the United States. Those accounting authorities proposing to conduct settlement operations within the United States will be assigned a "US" AAIC prefix if approved. Certified accounting authorities, who maintain their settlement operations outside the U.S., will retain the AAIC originally assigned by the country of origin. We do not intend to approve as accounting authorities any foreign-based entities who have not already been approved as accounting authorities by other administrations.

22. Because the primary purpose of our proposed rules is to ensure adherence to international settlement procedures, we are including language in the application and rules which would make clear to applicants the requirement to adhere to applicable FCC policies and rules, the International Telecommunication Regulations (ITR), and other international rules, regulations, agreements, and, where appropriate, CCITT Recommendations. The rules also propose that all applicants provide evidence of financial responsibility. To the extent that the applicant is a business with sound account capability, formal financial statements will be required. Individuals may provide other documentation proving all assets, liabilities, income and expenses. We invite comment as to the types of documents acceptable for this purpose as well as the specific criteria for evaluation. Although the United States is not a guarantor of payments by its citizens, our proposed rules seek to minimize potential financial risks that might be present if settlement operations are performed by other accounting authorities and to document FCC policy that the ship station licensee has final responsibility for settlement should their selected accounting authority be unable or unwilling to make valid payments to foreign entities.

23. The rules also detail the procedures the Commission will utilize to obtain any public comment on applications received by the Commission as well as to notify applicants as to whether they have been certified as accounting authorities. Comments received during the informal public comment period, to the extent that we receive information that an applicant could not meet the financial or technical responsibilities of an accounting authority, or, otherwise serve the best interests of the U.S. Government, will be taken into consideration in making a determination as to whether to approve the applicant as an accounting authority.

24. The Commission would examine the applicant's basic qualifications and any comments received during the informal public comment period, and, if the applicant is found to be qualified, the Commission would then inform the applicant, in writing, that the application has been approved.

25. Settlement Operations. We set forth in these sections several operational requirements for accounting authorities to follow. Basically, these operational requirements parallel applicable ITR and other international rules, regulations, agreements, and applicable CCITT Recommendations and require adherence to established international procedures.

26. We are proposing to allow accounting authorities a full six months following certification as an accounting authority to commence settlement operations. This appears to us to be a reasonable period of time in which to initiate settlements.

27. The rules also propose a settlement period, or period of time within which individual settlements must be accomplished, consistent with ITU procedures. This provision requires accounting authorities to make timely payment to foreign administrations and to accept accounts both in gold francs and in Special Drawing Rights (SDRs). These requirements are in accord with existing international procedures and FCC policy, as is the requirement to settle accounts taking into consideration CCITT Recommendation D.90.

28. In addition, the proposed rules establish the requirement that accounting authorities cooperate fully with the Commission concerning maritime settlements issues. This requirement is designed to ensure that outstanding accounting settlement issues or financial problems of accounting authorities are resolved effectively, timely and in accordance with established policies and procedures. Since the United States government is required, upon request, to take all possible steps, within the limits of applicable national law, to ensure settlement of the accounts of the licensee, (Radio Regulations, Geneva 1979, Article 66, Section III Accounting, paragraph 10, number 5097) this requirement is intended to ensure that the Commission is kept aware of potential problems or issues which could affect the national interest or which could have a significant impact on overall settlement operations. The proposed rules also make accounting authorities subject to audit by the Commission or its representative.

29. Reporting Requirements. We propose several new reporting requirements that would be required of accounting authorities. These reports should enable the Commission to monitor accounting authority operations to ensure adherence to these rules and to appropriate international settlement procedures. Currently, the Commission submits monthly reports to the ITU in Geneva detailing the inventory of U.S. licensed ship stations operating in international waters. We propose that accounting authorities provide the Commission with a detailed report of additions, deletions, or modifications to their inventory of serviced vessels each month. The Commission would use this information to maintain the ITU database and to assure efficient settlement operations. The rules also require an end of year inventory of vessels for which the accounting authority is the settlement entity and an annual statistical report which would provide information to the Commission regarding settlement operations.

30. Enforcement. These sections of the rules set forth the procedures the Commission will use to investigate and to resolve complaints or infractions of the Commission's rules or established international settlement procedures. The proposed rules specify grounds for enforcement sanctions, including forfeiture, and/or cancellation of an accounting authority's certification. The rules also specify that the Commission will afford an accounting authority notice and an opportunity to present its side of any issue involving cancellation of its accounting authority privilege. The rules also provide that any ship station licensee affected by the cancellation of an accounting authority's privilege must find another accounting authority to settle its accounts. The Commission will notify the ship stations, via a Public Notice, of any cancellations, and, inasmuch as possible, list individual shipowners serviced by the cancelled accounting authority and identified from the required reports of vessel inventories. Finally, the proposed rules provide for forfeiture or other sanction action should a ship operator or licensee not remit full and timely payment to the Commission or to an approved accounting authority when properly billed or in the event that the accounting authority fails in their responsibility to forward payment to the foreign entity. The Commission reserves the right to cooperate with foreign administrations in restricting public correspondence communications to and from vessels for which valid payments have not been received or made as required (Distress and safety communications must be carried without charge.) and to utilize available debt collection procedures to collect amounts owed.

IV. Procedural Matters

31. Ex parte. This is a non-restricted notice and comment rule-making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206(a).

32. The Regulatory Flexibility Act. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Initial Regulatory Flexibility Analysis

Reason for action: This rulemaking proceeding is initiated to obtain comment regarding the administration of accounting authorities in the maritime mobile and maritime mobile-satellite radio services except for distress and safety communications.

Objectives: The Commission seeks to establish standards for the approval and/or cancellation of accounting

authority certification to be administered by the Commission.

Legal basis: The proposed action is authorized under sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended.

Reporting, recordkeeping and other compliance requirements: Entities or individuals who wish to become accounting authorities or who have been issued interim accounting authority certifications would need to file an application with the Commission and present assurance of financial responsibility. Accounting authorities would be required to report to the Commission on the status of their settlement activities.

Federal rules which overlap, duplicate, or conflict with these rules: None.

Description, potential impact, and number of small entities involved: Any rule changes in this proceeding could affect small businesses wishing to become accounting authorities. The number of small entities that will be affected is unknown. The Commission will further examine the impact of any rule changes on small entities after evaluating the comments in this proceeding.

Any significant alternatives minimizing the impact on small entities consistent with the stated objectives: None.

33. Paperwork Reduction Act. The following collection of information requirement contained in this proposed rule has been submitted to the Office of Management and Budget for review under Section 3504(H) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of this submission may be purchased from the Commission's copy contractor: International Transcription Service, Inc.; 2100 M Street, NW., suite 140; Washington, DC 20037; Telephone: (202) 857–3800. Persons wishing to comment on this collection of information should direct their comments to Timothy Fain; Office of Management and Budget; NEOB; Room 3235; Washington, DC 20503; Telephone (202) 395–3561. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission; Records Management Division; Paperwork Reduction Project; Washington, DC 20554. For further information, contact Judy Boley; Federal Communications Commission; Telephone (202) 632–7513.

Action: New collections.

OMB number: None.

Title: Respectively, (1) Application for Certification of an Accounting Authority and (2) Annual Statistical Report of Settlement Operations.

Form numbers: (1) FCC Form 44. (2) FCC Form 45.

Frequency of response: (1) One-time only. (2) Yearly and record keeping requirement.

Respondents: (1) Individuals or households and businesses or other, and (2) for profit (including small businesses).

Estimated annual burden: (1) 25 responses, 3 hours average burden per response, 75 hours total annual burden. (2) 25 responses, 1 hour average burden per response, 25 hours annual burden; 25 record keepers, 1 hour average burden per record keeper, 25 hours annual burden per record keeper; 50 hours total annual burden.

Needs and uses: (1) To determine eligibility of applicant. (2) Agency will use statistics for internal studies and will also use information to ensure compliance.

34. Notice and Comment Provision. Authority for the proposed rules is contained in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended (47 U.S.C. 154(i), 154(j) and 303(r)). Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before February 3, 1994, and reply comments on or before February 18, 1994. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the Commission's reliance on such information is noted in the Report and Order.

35. Participants in this proceeding must file an original and four copies of all comments, reply comments, and supporting documents. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Persons who wish to participate informally may submit two copies of their comments, stating thereon the docket number of this proceeding. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) at that address. For additional information on this proceeding, please contact Shirley Wood at (202) 632–1027.

V. Conclusion

36. The Commission is proposing these rules to establish basic qualifications and requirements for individuals or entities who may wish to serve as accounting authorities for the settlement of international radio maritime accounts involving U.S. registered vessels operating in foreign or international waters. By these rules, the Commission seeks to ensure that accounting authorities operate in accordance with established international procedures. We seek comment on the proposed rules and any alternatives you may have.

List of Subjects in 47 CFR Part 3

Accounting, Maritime Carriers, Radio, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rules Changes

Title 47 of the Code of Federal Regulations is amended to add a new Part 3 as follows:

PART 3—AUTHORIZATION AND ADMINISTRATION OF ACCOUNTING AUTHORITIES IN MARITIME AND MARITIME MOBILE—SATELLITE RADIO SERVICES

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General

§ 3.1 Scope, basis, purpose.

By these rules the Federal Communications Commission is delineating its responsibilities in certifying and monitoring accounting authorities in the maritime mobile and maritime mobile-satellite radio services. These entities settle accounts for public correspondence. These rules are intended to ensure that settlements of accounts for U.S. licensed ship radio stations are conducted in accordance with the International Telecommunication Regulations (ITR), taking into account the applicable CCITT Recommendations.

§ 3.2 Terms and definitions.

(a) Accounting Authority. The administration of the country that has issued the license for a mobile station (or the recognized private operating agency or other entity/entities designated by the administration in accordance with L1 to L6 of CCITT Recommendation D.90) to whom maritime accounts in respect of mobile stations licensed by that country may be sent.

(b) Accounting Authority Certification Officer. The official designated by the Managing Director, Federal Communications Commission, who is responsible, based on the coordination and review of information related to applicants, for granting certification as an accounting authority in the maritime mobile and maritime mobile-satellite radio services. The Accounting Authority Certification Officer may initiate action to suspend or cancel an accounting authority certification if it is determined to be in the public's best interest.

(c) Accounting Authority Identification Codes (AAICs). The discrete identification code of accounting authority responsible for the settlement of maritime accounts (Annex A to CCITT Recommendation D.90).

(d) Administration. Any governmental department or service responsible for discharging the obligations undertaken in the Convention of the International Telecommunication Union and the Radio Regulations. For purposes of these rules, "administration" refers to a foreign government or the U.S. Government, and more specifically, to the Federal Communications Commission.

(e) Authorization. Approval by the Federal Communications Commission (FCC) to operate as an accounting authority. Synonymous with "certification".

(f) CCITT.[1] The internationally recognized French acronym for the International Telegraph and Telephone Consultative Committee, one of the sub-entities of the International Telecommunication Union (ITU). The CCITT is responsible for developing international telecommunications recommendations relating to standardization of international telecommunications services and facilities, including matters related to international charging and accounting principles and the settlement of international telecommunications accounts. Such recommendations are, effectively, the detailed implementation provisions for topics addressed in the International Telecommunication Regulations (ITR).

(g) Certification. Approval by the Federal Communications Commission (FCC) to operate as an accounting authority. Synonymous with "authorization".

(h) Coast earth station. An earth station in the fixed-satellite service or, in some cases, in the maritime mobile-satellite service, located at a specified fixed point on land to provide a feeder link for the maritime mobile-satellite service.

(i) Coast station. A land station in the maritime mobile service.

(j) Commission. The Federal Communications Commission. The FCC.

(k) Gold franc. A monetary unit representing the value of a particular nation's currency to a gold par value. One of the monetary units used to effect accounting settlements in the maritime mobile and the maritime mobile-satellite services.

(l) International Telecommunications Union (ITU). One of the United Nations family organizations headquartered in Geneva, Switzerland along with several other United Nations (UN) family organizations. The ITU is the UN agency responsible for all matters related to international telecommunications. The ITU has over 170 Member Countries, including the United States, and provides an international forum for dealing with all aspects of international telecommunications, including radio, telecom services and telecom facilities.

(m) Linking coefficient. The ITU mandated conversion factor used to convert gold francs to Special Drawing Rights (SDRs). Among other things, it is used to perform account settlements in the maritime mobile and the maritime mobile-satellite services.

(n) Maritime mobile service. A mobile service between coast stations and ship stations, or between ship stations, or between associated on-board communication stations. Survival craft stations and emergency position-indicating radiobeacon stations may also participate in this service.

(o) Maritime mobile-satellite service. A mobile-satellite service in which mobile earth stations are located on board ships. Survival craft stations and emergency position-indicating radiobeacon stations may also participate in this radio service.

(p) Public correspondence. Any telecommunication which the office and stations must, by reason of their being at the disposal of the public, accept for transmission. This usually applies to maritime mobile and maritime mobile-satellite stations.

(q) Recognized Private Operating Agencies (RPOAs).[2] Individuals, companies or corporations, other than governments or agencies, recognized by administrations, which operate telecommunications installations or provide telecommunications services intended for international use or which are capable of causing interference to international telecommunications. RPOAs which settle debtor accounts for public correspondence in the maritime mobile and maritime mobile-satellite

[1] At the ITU Additional Plenipotentiary Conference in Geneva (December 1992), the structure, working methods, and construct of the basic ITU treaty instrument were modified. The result of this is that the names of the sub-entities of the ITU will change (e.g., the CCITT will become the Telecommunications Standardization Sector and Recognized Private Operating Agency will become Recognized Operating Agency). The changes were placed into provisional effect on March 1, 1993; however, since the formal entry into force of these changes is not until July 1, 1994, we will refer to the familiar, existing ITU nomenclatures and documents for convenience and ease of understanding in this instant proceeding.

[2] See Footnote 1.

radio services must be certified as accounting authorities.

(r) Ship station. A mobile station in the maritime mobile service located on board a vessel which is not permanently moored, other than a survival craft station.

(s) Special Drawing Right (SDR). A monetary unit of the International Monetary Fund (IMF) currently based on a market basket of exchange rates for the United States, West Germany, Great Britain, France and Japan but is subject to IMF's definition. One of the monetary units used to effect accounting settlements in the maritime mobile and maritime mobile-satellite services.

(t) United States. The continental U.S., Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

Eligibility

§ 3.10 Basic qualifications.

(a) Applicants must meet the requirements and conditions contained in these rules in order to be certified as an accounting authority. No individual or other entity, including accounting authorities approved by other administrations, may act as a United States accounting authority and settle accounts of U.S. licensed vessels in the maritime mobile or maritime mobile-satellite services without a certification from the Federal Communications Commission.

(b) U.S. citizenship is not required of individuals in order to receive certification from the Commission to be an accounting authority. Likewise, joint ventures need not be organized under the laws of the United States in order to be eligible to perform settlements for U.S. licensed vessels. See, however, Section 3.11.

(c) Prior experience in maritime accounting, general commercial accounting, international shipping or any other related endeavor will be taken into consideration by the Commission in certifying accounting authorities. The lack of such expertise, however, will not automatically disqualify an individual, partnership, corporation or other entity from becoming an accounting authority.

(d) Applicants must provide formal financial statements or documentation proving all assets, liabilities, income and expenses.

§ 3.11 Location of settlement operation.

(a) Within the United States. Certified accounting authorities maintaining all settlement operations, as well as associated documentation, within the United States will be assigned Accounting Authority Identification Codes with a "US" prefix.

(b) Outside the United States. Certified accounting authorities maintaining settlement operations outside the United States will be assigned the same Accounting Authority Identification Codes (AAIC) as those originally assigned to such entities by the administrations of the countries of origin. However, in no case will an entity be certified as an accounting authority for settlement of U.S. licensed vessel accounts unless the entity is requesting to conduct a settlement operation in the United States or has already been issued an AAIC by another administration.

Application Procedures

§ 3.20 Application form.

Written application must be made to the Federal Communications Commission on FCC Form 44, "Application For Certification As An Accounting Authority" in order to be considered for certification as an accounting authority. No other application form may be used. No consideration will be given to applicants not submitting applications in accordance with these rules or in accordance with any other instructions the Commission may issue. FCC Form 44 may be obtained from the Commission by writing to the address shown in Section 3.61.

§ 3.21 Order of consideration.

(a) Accounting authority applications will be processed on a first-come first-served basis. When applications are received on the same day, the application with the earliest mailing date, as evidenced by the postmark will be processed first.

(b) At any given time, there will be no more than 25 certified accounting authorities with a minimum of 15 "US" Accounting Authority Identification Codes (AAICs) reserved for use by accounting authorities conducting settlement operations within the United States. The Commission will retain all valid applications received after the maximum number of accounting authorities have been approved and will inform such applicants that should an Accounting Authority Identification Code become available for reassignment in the future, the Commission will conditionally certify as an accounting authority the oldest of the qualified pending applicants, as determined by the order of receipt. Final certification would be conditional upon filing of an amended application (if necessary). The Commission will inform the applicant of his/her conditional selection in writing to confirm the applicant's continued interest in becoming an accounting authority.

§ 3.22 Number of accounting authority identification codes per applicant.

(a) No entity will be entitled to or assigned more than one Accounting Authority Identification Code.

(b) Accounting Authority Identification Codes may not be reassigned, sold, bartered or transferred and do not convey upon sale or absorption of a company or firm without the express written approval of the Commission. Only the FCC may certify accounting authorities and assign U.S. Accounting Authority Identification Codes for entities settling accounts of U.S. licensed vessels in the maritime mobile and maritime mobile-satellite services.

§ 3.23 Legal applicant.

The application shall be signed by the individual, partner or primary officer of a corporation who is legally able to obligate the entity for which he or she is a representative.

§ 3.24 Evidence of financial responsibility.

All applicants must provide evidence of sound financial status. To the extent that the applicant is a business, formal financial statements will be required. Other applicants may submit documentation proving all assets, liabilities, income and expenses which supports their ability to meet their personal obligations.

§ 3.25 Number of copies

One original and two copies of FCC Form 44, "Application For Certification As An Accounting Authority" will be required. Only application mailed to the Commission on official, Commission approved application forms will be considered. Applications should be mailed at least 90 days prior to planned commencement of settlement activities to allow time for the Commission to review the application and to allow for the informal public comment period.

§ 3.26 Where application is to be mailed.

All applications shall be mailed to the Accounting Authority Certification Officer in Washington, DC. The designated address will be displayed on the FCC Form 44, "Application for Certification As An Accounting Authority".

§ 3.27 Amended application.

Changes in circumstances of a material nature that cause information previously supplied to the FCC to be incorrect or incomplete and that could affect the approval process, require the

submission of an amended application. The amended application should be mailed to the Commission immediately following such material change. See also Sections 3.24 and 3.51.

§ 3.28 Denial of privilege.

The Commission, in its sole discretion, may refuse to grant an application to become an accounting authority for any of the following reasons:

(a) Failure to provide evidence of acceptable financial responsibility.

(b) If the applicant, in the opinion of the FCC reviewing official, does not possess the qualifications necessary to the proper functioning of an accounting authority.

(c) Application is not personally signed by the proper official(s).

(d) Applicant does not provide evidence that accounting operations will take place in the United States or its territories and the applicant does not already possess an AAIC issued by another administration.

(e) Application is incomplete, the applicant fails to provide additional information requested by the Commission or the applicant indicates that it cannot meet a particular provision.

(f) When the Commission determines that the grant of an authorization is contrary to the public interest.

§ 3.29 Notification of authorization.

(a) The Commission will publish the name of an applicant in a public notice before granting certification and will invite informal public comment on the qualifications of the applicant from any interested parties. Comments received will be taken into consideration by the Commission in making its determination as to whether to approve an applicant as an accounting authority.

(b) The Commission will notify each applicant in writing as to whether the applicant has been approved as an accounting authority. If the application is not approved, the Commission will provide a brief statement of the grounds for denial.

(c) The names and addresses of all newly certified accounting authorities will be published in a public notice issued by the Commission. Additionally, the Commission will notify the ITU within 30 days of any changes to its approved list of accounting authorities.

Settlement Operations

§ 3.40 Operational requirements.

All accounting authorities must conduct their operations in conformance with the provisions contained in this section and with relevant rules and guidance issued from time to time by the Commission.

§ 3.41 Amount of time allowed before initial settlements.

An accounting authority must begin settling accounts no later than six months from the date of certification. Failure to commence settlement operations is cause for suspension or cancellation of an accounting authority certification.

§ 3.42 Location of processing facility.

Settlement of maritime mobile and maritime mobile-satellite service accounts must be performed within the United States by all accounting authorities possessing the "US" prefix. Other accounting authorities approved by the Commission may settle accounting either in the United States or elsewhere. See also sections 3.11 and 3.21(b).

§ 3.43 Applicable rules and regulations.

Accounting authority operations must be conducted in accordance with applicable FCC rules and regulations, the International Telecommunication Regulations (ITR), and other international rules, regulations, agreements, and, where appropriate, CCITT Recommendations. In particular, the following must be adhered to (or taken into account in the case of CCITT Recommendations):

(a) The latest basic treaty instrument(s) of the International Telecommunication Union (ITU) which have been ratified by the United States—currently the ITU Convention (Nairobi, 1982);

(b) Binding agreements contained in the Final Acts of World Administrative Radio Conferences and/or World International Telecommunication Conferences;

(c) ITU Radio Regulations;

(d) ITU International Telecommunication Regulations (ITR);

(e) CCITT Recommendations (particularly D.90 and D.195); and

(f) FCC Rules and Regulations.

§ 3.44 Time to achieve settlements.

All maritime telecommunications accounts should be timely paid in accordance with applicable ITU Regulations, Article 66 and International Telecommunication Regulations (Melbourne, 1988). Accounting authorities are deemed to be responsible for remitting, in a timely manner, all valid amounts due to foreign administrations or their agents.

§ 3.45 Amount of charges.

Accounting Authorities may charge any reasonable fee for their settlement services. Settlements themselves, however, must adhere to the standards set forth in these rules and must be in accordance with the International Telecommunication Regulations (ITR) taking into account the applicable CCITT Recommendations and other guidance issued by the Commission.

§ 3.46 Use of gold francs.

An accounting authority must accept accounts presented to it from foreign administrations in gold francs. These gold francs must be converted on the date of receipt of the bill to the applicable Special Drawing Rights (SDR) rate (as published by the International Monetary Fund) on that date utilizing the linking coefficient of 3.061 gold francs = 1 SDR. An equivalent amount in U.S. dollars must be paid to the foreign administration. Upon written concurrence by the FCC, an accounting authority may make separate agreements, in writing, with foreign administrations or their agents for alternative settlement methods, in accordance with CCITT Recommendation D.195.

§ 3.47 Use of SDRs.

An accounting authority must accept accounts presented to it from foreign administrations in Special Drawing Rights (SDRs). These SDRs must be converted to dollars on the date of receipt by the accounting authority and an equivalent amount in U.S. dollars must be paid to the foreign administration. The conversion rate will be the applicable rate published by the International Monetary Fund (IMF) for the date of receipt of the account from the foreign administration. Upon written concurrence by the FCC, any accounting authority may make separate agreements, in writing, with foreign administrations or their agents for alternative settlement methods, provided account is taken of CCITT Recommendation D.195.

§ 3.48 Cooperation with the Commission.

Accounting authorities must cooperate fully with the FCC in all respects concerning international maritime settlements issues, including the resolution of questions of fact or other issues arising as a result of settlement operations.

§ 3.49 Agreement to be audited.

Accounting authorities accept their certifications on condition that they are subject to audit by the Commission or its representative at any time.

Additionally, the Commission reserves the right to verify any statement(s) made or any materials submitted to the Commission under these rules. Verification may involve discussions with ship owners or others as well as the requirement to submit additional information to the Commission. Failure to respond satisfactorily to any audit findings is grounds for forfeiture or suspension or cancellation of authority to act as an accounting authority for U.S. vessels.

§ 3.50 Retention of settlement records.

Accounting authorities must maintain, for the purpose of compliance with these rules, all settlement records for a period of at least seven years following settlement of an account with a foreign administration or agent.

§ 3.51 Cessation of operations.

The FCC must be notified immediately should an accounting authority plan to relinquish its certification or cease to perform settlements as authorized. Additionally, the Commission must be advised in advance of any proposed transfer of control of an accounting authority's firm or organization, by any means, to another entity. Any transfer of control of an accounting authority firm or organization to another entity cancels the previous accounting authority certification. The new entity must apply for certification in its own right if it is interested in becoming an accounting authority.

§ 3.52 Complaint/inquiry resolution procedures.

(a) Accounting authorities must maintain procedures for resolving complaints and/or inquiries from its contractual customers (vessels for which it performs settlements), the FCC, the ITU, and foreign administrations or their agents.

(b) If a foreign administration requests assistance in collection of accounts from ships licensed by the FCC, the appropriate accounting authority will provide all information requested by the Commission in a timely manner to enable the Commission to determine the cause of the complaint and to resolve the issue. If accounts are in dispute, the Commission will determine the amount due the foreign administration, accounting authority or RPOA, and may direct the accounting authority to pay the accounts to the foreign administration. If the accounting authority does not pay the disputed accounts within a reasonable timeframe, the Commission may take action to levy a forfeiture, cancel the AAIC privilege and/or to revoke any operating authority or licenses held by that accounting authority. See also § 3.72.

§ 3.53 FCC notification of refusal to provide telecommunications service to U.S. registered vessel(s).

An accounting authority must inform the FCC immediately should it receive notice from any source that a foreign administration or facility is refusing or plans to refuse legitimate public correspondence to or from any U.S. registered vessel.

§ 3.54 Notification of change in address.

The Commission must be notified in writing within 15 days of any change in address of an accounting authority. Such written notification should be sent to the address shown in § 3.61.

Reporting Requirements

§ 3.60 Reports.

(a) Inventory of Vessels. Within 60 days after receiving final approval from the FCC to be an accounting authority, each certified accounting authority must provide to the FCC an initial list of vessels for which it is performing settlements. This list should contain only U.S. registered vessels. Such list shall be typewritten or computer generated, be annotated to indicate it is the initial inventory and be in the general format of the following and provide the information shown:

Vessel name	*Call sign*	*Country of registry*

(b) Monthly Report on Additions/Modifications/Deletions to Vessel Inventory. Beginning 30 days after submission of an accounting authority's initial inventory of vessels (See paragraph (a) of this section) and each month thereafter, each accounting authority is required to submit to the FCC a monthly report on additions, modifications or deletions to its list of vessels for which it is performing or intending to perform settlements, whether or not settlements actually have taken place. The list should contain only U.S. registered vessels. The report shall be typewritten or computer generated and be in the following general format:

ADDITIONS TO CURRENT VESSEL INVENTORY

Vessel name	*Call sign*	*Effective date*

MODIFICATIONS TO CURRENT VESSEL INVENTORY

Previous vessel name	*Previous call sign*	*New vessel name*	*New call sign*	*Effective date*

DELETIONS TO CURRENT VESSEL INVENTORY

Vessel name	*Call sign*	*Effective date*

The preceeding report must be received by the Commission no later than 15 days following the end of the month for which the report pertains. Modifications refer to changes to call sign or ship name of vessels for which the accounting authority settles accounts and for which basic information has previously been provided to the Commission. Reports are to be submitted even if there have been no additions, modifications or deletions to vessel inventories since the previous report. If there are no changes to an inventory, this should be indicated on the report.

(c) End of Year Inventory. By February 1st of each year, each accounting authority will submit an end-of-year inventory report listing vessels for which the accounting authority performs settlements as of the previous December 31st. The list should contain only U.S. registered vessels. The report must be typewritten or computer generated and prepared in the same general format as that shown in paragraph (a) of this section except it should be annotated to indicate it is the End of Year inventory.

(d) Annual Statistical Report of Settlement Operations. By February 1st of each year, each accounting authority settling accounts for U.S. registered vessels must prepare and submit to the FCC an Annual Statistical Report, FCC Form 45, which details the number and dollar amount of settlements, by foreign administration, during the preceding twelve months. Information contained

in this report provides statistical data for Commission use.

§ 3.61 Reporting address.

All reports must be received at the following address no later than the required reporting date: Accounting Authority Certification Officer, Financial Management Division, Stop 1110A, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Enforcement

§ 3.70 Investigations.

The Commission may investigate any complaints made against accounting authorities to ensure compliance with the Commission's rules and with applicable ITU Regulations and other international maritime accounting procedures.

§ 3.71 Warnings.

The Commission may issue written warnings or forfeitures to accounting authorities which are found not to be operating in accordance with established rules and regulations. Warnings will generally be issued for violations which do not seriously or immediately affect settlement functions or international relations. Continued or unresolved violations may lead to further enforcement action by the Commission, including any or all legally available sanctions, including but not limited to, forfeitures (Communications Act of 1934, Sec. 503), suspension or cancellation of the accounting authority certification.

§ 3.72 Grounds for further enforcement action.

(a) The Commission may take further enforcement action, including forfeiture, suspension or cancellation of an accounting authority certification, if it is determined that the public interest so requires. Reasons for which such action may be taken include, inter alia:

(1) Failure to initiate settlements within six months of certification or failure to perform settlements during any subsequent six-month period;

(2) Illegal activity or fraud;

(3) Non-payment or late payment to a foreign administration or agent;

(4) Failure to follow ITR requirements and procedures;

(5) Failure to take into account CCITT recommendations;

(6) Failure to follow FCC rules and regulations;

(7) Bankruptcy;

(8) Providing false or incomplete information to the Commission or failure to comply with or respond to requests for information.

(b) Prior to taking any of the enforcement actions in paragraph (a) of this section, the Commission will give notice of its intent to take the specified action and the grounds therefor, and afford an opportunity to respond in writing; provided that, where the public interest so requires, the Commission may temporarily suspend a certification pending completion of these procedures.

§ 3.73 Waiting period after cancellation.

An accounting authority whose certification has been cancelled must wait a minimum of three years before reapplying to be an accounting authority.

§ 3.74 Ship stations affected by suspension, cancellation or relinquishment.

(a) Whenever the accounting authority privilege has been suspended, cancelled or relinquished, the accounting authority is responsible for immediately notifying all U.S. ship station licensees for which it was performing settlements of the circumstances and informing them of the requirement contained in paragraph (b) of this section;

(b) Those ship stations utilizing an accounting authority's AAIC for which the subject accounting authority certification has been suspended, cancelled or relinquished, must make contractual arrangements with another properly authorized accounting authority to settle its accounts;

(c) The Commission will notify the ITU of all accounting authority suspensions, cancellations and relinquishments; and

(d) The Commission will publish a public notice detailing all accounting authority suspensions, cancellations and relinquishments.

§ 3.75 Licensee's failure to make timely payment.

Failure to remit proper and timely payment to the Commission or to an accounting authority may result in one or more of the following actions against the licensee:

(a) Forfeiture or other authorized sanction.

(b) The refusal by foreign countries to accept or refer public correspondence communications to or from the vessel or vessels owned, operated or licensed by the person or entity failing to make payment. This action may be taken at the request of the Commission or independently by the foreign country or coast station involved.

(c) Further action to recover amounts owed utilizing any or all legally available debt collection procedures.

§ 3.76 Licensee's liability for payment.

The U.S. ship station licensee bears ultimate responsibility for final payment of its accounts. This responsibility cannot be superseded by the contractual agreement between the ship station licensee and the accounting authority. In the event that an accounting authority does not remit proper and timely payments on behalf of the ship station licensee:

(a) The ship station licensee will make arrangements for another accounting authority to perform future settlements, and

(b) The ship station licensee will settle any outstanding accounts due to foreign entities.

The Commission will, upon request, take all possible steps, within the limits of applicable national law, to ensure settlement of the accounts of the ship station licensee. As circumstances warrant, this may include issuing warnings to ship station licensees when it becomes apparent that an accounting authority is failing to settle accounts. See also §§ 3.70–3.74.

[FR Doc. 93–31193 Filed 12–23–93; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–124; Notice 3]

RIN 2137–AC25

Regulatory Review: Gas Pipeline Safety Standards; NAPSR Report on Recommendations for Revision of Gas Pipeline Safety Standards; Extension of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of request for information; extension of comment period.

SUMMARY: This notice extends the comment period for the rulemaking proposals submitted by the National Association of Pipeline Safety Representatives (NAPSR), published November 9, 1993 (58 FR 59431), from January 10, 1994, to April 11, 1994.

DATES: Interested persons are invited to submit comments by April 11, 1994.

ADDRESSES: Written comments must be submitted in duplicate and mailed or hand-delivered to the Dockets Unit, room 8421, Research and Special Programs Administration, U.S.

Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001. Identify the docket and notice number stated in the heading of this notice. Comments will become part of this docket and will be available for inspection or copying in room 8421 between 8:30 a.m. and 4:30 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Christina M. Sames, (202) 366–4561, regarding the content of this document, or the Dockets Unit, (202) 366–5046, regarding copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION: The American Gas Association (AGA) requested a 90 day extension of time be granted for public comment to the NAPSR rulemaking proposals for the safety of natural gas and other gas pipelines. The request argued an extension of time was necessary to allow AGA members time to review the extensive proposals, to meet and discuss the issues, and to prepare detailed responses to the proposals.

RSPA has decided the 90 day extension to the public comment period is reasonable to allow AGA to meet and respond to the NAPSR recommendations. The comment period will therefore be extended to close on April 11, 1994.

Authority: 49 App. U.S.C. 1671 and 1804; 49 CFR 1.53 and appendix A to part 106.

Issued in Washington, DC on December 21, 1993.

George W. Tenley, Jr.

Associate Administrator for Pipeline Safety.

[FR Doc. 93–31507 Filed 12–23–93; 8:45 am]

BILLING CODE 4910–60–P

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1105, 1121 and 1152

[Ex Parte No. 511]

Petition for Rulemaking; Protection of Surveying Benchmarks in Railroad Abandonments

AGENCY: Interstate Commerce Commission.

ACTION: Petition for rulemaking; extension of comment due date.

SUMMARY: By decision served November 10, 1993 (58 FR 60164, November 15, 1993), the Commission granted American Congress of Surveying and Mapping (ACSM) a 30-day extension of time to file comments. Comments were due December 20, 1993.

By letter filed December 14, 1993, ACSM requests an additional 60-day extension to February 18, 1994, to file comments. ACSM states additional time is needed to develop procedures for preservation of surveying benchmarks that would not be unduly disruptive of the rail abandonment process. ACSM states the Association of American Railroads, the U.S. Dept. of Commerce Coast and Geodetic Survey and the U.S. Dept. of the Interior Geological Survey National Mapping Division do not object to the extension.

The request is reasonable and will be granted.

DATES: Comments must be received by February 18, 1994.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 511 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ronald M. Smullian, (202) 927–5292 or Richard B. Felder (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

Decided: December 23, 1993.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–31458 Filed 12–23–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB10

Captive-bred Wildlife Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of re-opened comment period.

SUMMARY: On June 11, 1993, the Fish and Wildlife Service (Service) published a proposed rule (58 FR 32632) that would revise the captive-bred wildlife (CBW) regulations and the definitions of the term "harass" and "enhance the propagation or survival". The 90-day public comment period closed on September 9, 1993. Extensive comment on the proposal was received. The Service has decided to eliminate education as the sole basis for justifying issuance of a CBW registration, and a final rule to that effect appears in today's **Federal Register**. Because of the complex and controversial nature of the proposed rule, this notice re-opens the comment period on the balance of the issues in the proposal, including the question of the value of education as it relates to endangered species permits.

DATES: The Service will consider all comments received by February 25, 1994.

ADDRESSES: Send comments to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: R.K. Robinson, Special Assistant-Ecological Services, at the above address (703/358–2093).

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and implementing regulations prohibit any person subject to the jurisdiction of the United States from conducting certain activities with endangered or threatened species of fish or wildlife. These activities include, among others, import, export, take and interstate or foreign commerce. The Secretary of the Interior (or the Secretary of Commerce in the case of certain marine species) may permit such activities, under such terms and conditions as he/she shall prescribe, for scientific purposes or to enhance the propagation or survival of the affected species, provided these activities are consistent with the purposes of the Act. The Secretary of the Interior's authority to administer permit matters relating to endangered and threatened species has been delegated through the Director of the Fish and Wildlife Service (Service) to the Office of Management Authority (OMA).

Since 1976, the Service has been striving to achieve an appropriate degree of control over prohibited activities involving living wildlife of non-native species born in captivity in the United States. The Captive Self-Sustaining Population system, established on June 1, 1977 (42 FR 28052) received an extensive public review in 1978 and 1979. On September 17, 1979, the Service published a final rule (44 FR 54002) that established the Captive-bred Wildlife (CBW) system as it currently exists.

The 1979 rule amended regulations in 50 CFR 17.21 by adding subsection 17.21(g), which granted general, conditional permission to take; import or export; deliver, receive, carry transport or ship in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any non-native endangered or threatened wildlife that is born in captivity in the United States. In other words, the regulation itself contains the permit. In order for persons or

institutions to operate under the permit, certain conditions must be met, including that the person or institution must first register with the Service. The registration authorizes interstate purchase and sale only between entities that both hold CBW registrations for the taxon concerned.

The 1979 final rule also amended the definition of "enhance the propagation or survival" to include a wide range of customary animal husbandry practices needed to maintain self-sustaining and genetically viable populations of wildlife in captivity. Other aspects of the definition of "enhance" that were codified in 1979 and are still in use today include accumulation, holding and transfer of animals not immediately needed or suitable for propagative or scientific purposes, and exhibition of living wildlife in a manner designed to educate the public about the ecological role and conservation needs of the affected species (50 CFR 17.3).

The above definitions are found in Subpart A, the General Provisions of Part 17. Therefore, they apply to all endangered and threatened species permits for captive wildlife issued under §§ 17.22 and 17.32 as well as to CBW registrations under § 17.21(g).

After twelve years' experience with the system, the Service initiated another review with a Notice of Intent to Propose Rule, published on January 7, 1992 (54 FR 548).

After review of comments received, the Service published a proposed rule on June 11, 1993 (58 FR 32632), that proposed several changes to § 17.21(g): elimination of registration for several species that are present in the United States in large numbers and/or that are genetically unsuitable for scientifically based breeding programs; restriction of eligibility for CBW registrations to those entities that are participants in an approved responsible cooperative breeding program for the taxon concerned; amendment of the definition of "harass" in § 17.3 to exclude normal animal husbandry practices such as humane and healthful care when applied to captive-born wildlife; and, conditionally, deletion of education from the definition of "enhance" in § 17.3.

In today's **Federal Register**, the Service is publishing a final rule that is limited to the narrow issue of education as it relates to the CBW system. That rule eliminates public education through exhibition of living wildlife as the sole justification for issuance of a CBW registration under § 17.21(g). The basis for that decision is the Service's belief that the scope of the CBW system should be revised to more closely relate to its original intent, *i.e.*, the encouragement of responsible breeding programs that are specifically designed to help conserve the species involved.

The purpose of this notice is to re-open the comment period on the balance of the issues set forth in the proposed rule, including the larger question of the value education provides to the conservation of non-native species in the wild as it applies to endangered species permits issued under § 17.22.

For more detailed background on the issues involved, the reader is referred to the final rule in today's **Federal Register**, as well as the prior rulemaking documents cited above.

Information and Comments

A total of 658 written responses were received during the comment period on the proposed rule. This total included 65 signatures on a petition calling for the deregulation of interstate commerce in listed wildlife, and 89 signatures on a statement of opposition to the deletion of education from the definition of "enhance" in § 17.3. Education was a subject in 544 responses, and was the only issue mentioned in 510 of them. Issues other than education were addressed in 148 responses.

The comment/response section below summarizes comments on the role of education only; however, additional comments on any other aspects of the proposed changes to 50 CFR 17.21(g) are also welcome.

Comment: One commenter said the Service did not adequately explain why there must be a direct cause and effect relationship between education through exhibition of living wildlife and enhancement of survival in the wild of the species exhibited.

Response: The Act requires that in order to issue a permit, the Service must make an affirmative finding that the activity proposed will be for scientific purposes, or will enhance the propagation or survival of the species. Since the existing regulation says that public education can constitute enhancement, it follows that the Service must find that the educational effort proposed does in fact enhance the survival of the species.

Comment: Several commenters proposed that a task force or working group of qualified educators and exhibitors be convened by the Service for the purpose of drafting standards and criteria with which to assess educational programs. Another commenter suggested that professional organizations such as the International Association of Avian Trainers and Educators, the Organization of Wildlife Lecturers, or the International Marine Mammal Trainers Association could draw up guidelines that each member must follow in order to do a show. These guidelines would be submitted to the Service for refinement and agreement. Exhibitors wishing to put on a demonstration with animals would be required to join an appropriate organization and comply with the guidelines.

Response: The suggested task force is an interesting idea. The Service is concerned that it would be difficult to convene such a group that would be manageable in size, but still represent all the classes of animal users desiring permits. Submission of guidelines by professional groups for approval is also interesting, but the Service questions the propriety and legality of requiring applicants to join private organizations. However, it may be possible to develop rational and realistic guidelines that satisfy the purposes and policies of the Act.

Comment: The following is a summarization of suggested standards and criteria for educational displays.

Several commenters suggested that exhibitors have college training in education, biology, zoology, ecology, conservation, etc.

One commenter suggested that the presentation should deal with ecological concepts or environmental issues rather than focusing strictly on the species being exhibited. Another said that the exhibitor should provide information at the time the animal is being shown on the natural history of the species and the conservation issues affecting it; should engage in educational outreach beyond the on-site exhibits; should engage in a program of research or captive breeding; and should follow up on presentations and outreach efforts in order to gauge their effectiveness and make improvements.

Another commenter advocated a similar approach and added that the educational programs should encourage the learner to seek out new information and act in an environmentally responsible manner, and should discourage exploitation of wild animals.

One commenter recommended that the educational program must have some element of a conservation project involved either as a direct benefit or as a discussion item in the presentation, and that the animal should be used in a manner to exhibit natural behavior rather than in imitation of human behavior and activities.

Another commenter added that exhibition of wildlife solely for the purpose of entertainment should not be allowed, and that the program should

include information describing how the public can help the species in the wild.

Finally, some commenters suggested that commercial permitees make a donation of some of their proceeds to a legitimate wildlife conservation program.

Response: All of these suggested criteria are under consideration by the Service, and comments on the specific ideas shown above as well as new suggestions are solicited.

Public Comment Solicited

The Service intends that any final rule will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of the proposed rule are hereby solicited. Comments previously submitted in response to the proposed rule (58 FR 32632, June 11, 1993) will receive consideration; therefore, it is not necessary to respond again unless the commenter has new views or suggestions he/she wishes to enter into the record.

Author

The primary author of this notice is R. K. Robinson, Special Assistant—Ecological Services, U.S. Fish and Wildlife Service, room 420C, 4401 North Fairfax Drive, Arlington, VA 22203.

Authority

The authority citation for part 17 continues to read as follows; 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; U.S.C. 4201–4245; Pub. L. 99–626, 100 Stat. 3500.

List of Subjects in 50 CFR Part 17

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

Dated: December 10, 1993.

Richard N. Smith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–31423 Filed 12–21–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[121693A]

Reef Fish Fishery of the Gulf of Mexico

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will solicit public comments in January and February 1994 on a proposed draft amendment to the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico. Draft Amendment 9 includes management measures to collect historical landings data from fishermen, to extend the reef fish permit moratorium and red snapper endorsement system, and to provide partial red snapper endorsements in 1995 to historical captains. The historical landings data will be used to establish the eligibility of fishermen if a system to limit access to the red snapper fishery is implemented based on individual transferable quotas (ITQs) or license limitations. Individuals would be notified of their potential allocation.

DATES: Written comments on the draft amendment will be accepted until February 28, 1994. See **SUPPLEMENTARY INFORMATION** for dates, time, and location of the public hearings.

ADDRESSES: Send written comments to Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, Florida 33609 (FAX: 813–225–7015).

FOR FURTHER INFORMATION CONTACT: Steven M. Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council, (813) 228–2815.

SUPPLEMENTARY INFORMATION: Draft Amendment 9 does not implement red snapper limited access. Fishermen at public hearings and advisory panel meetings have asked that initial determinations of ITQ or license limitation allocations be made before the Council makes a final decision regarding limited access; this would allow them to know how such a decision will affect them. Alternatives that would extend the vessel permit moratorium and the red snapper endorsement system are being considered because these measures are scheduled to terminate before a long-term, red snapper effort limitation management system can be implemented. Alternatives allowing partial red snapper endorsements for historical captains are being considered because certain long time captains who are not the income qualifier for their vessel permits believed they were unfairly excluded from the original endorsement distribution.

The hearings will be held from 7 p.m. to 10 p.m. as follows:

1. Wednesday, January 26: Auditorium, Gulf Coast Research Laboratory, J.L. Scott Marine Education Center and Aquarium, 115 East Beach Boulevard (U.S. Highway 90), Biloxi, Mississippi (601–374–5550).

2. Wednesday, January 26: Conference Room, Panama City Laboratory, National Marine Fisheries Service, 3500 Delwood Beach Road, Panama City, Florida (904–234–6541).

3. Thursday, January 27: Orange Beach Community Center, 27301 Canal Road, Orange Beach, Alabama (205–981–6141).

4. Thursday, January 27: Old Library, Pinellas County Cooperative Extension Service, 12175 125th Street North, Largo, Florida (813–582–2100).

5. Tuesday, February 1: H.L. Stokely Hall, Ft. Brown Memorial Center Complex, 600 International Boulevard, Brownsville, Texas (210–542–3367).

6. Tuesday, February 1: Policy Jury Annex, Courthouse Square, Cameron, Louisiana (318–775–5718).

7. Wednesday, February 2: Visitor's Center Auditorium, University of Texas, Marine Science Institute, 750 Channel View Drive, Port Aransas, Texas (512–749–6729).

8. Wednesday, February 2: Versailles Room, Larose Regional Park, 307 East 5th Street, Larose, Louisiana (504–693–7355).

9. Thursday, February 3: Ballroom South, Holiday Inn on the Beach, 5002 Seawall Boulevard, Galveston, Texas (409–740–3581).

10. Thursday, February 3: Boothville Community Center, Highway 23, Boothville, Louisiana (504–657–7202).

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Laura Mataluni at the above Council address by January 19, 1994.

Dated: December 21, 1993.

David S. Crestin,

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

[FR Doc. 93–31456 Filed 12–23–93; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 931059–3259; I.D. 092293E]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to require increased observer coverage and improved equipment for measuring groundfish total catches by vessels and processors participating in the Western Alaska Community Development Quota (CDQ) pollock fisheries. This action is intended to improve estimates of groundfish total catches in the CDQ fisheries.

DATES: Comments must be received at the following address no later than 4:30 p.m., Alaska local time (A.l.t.), January 26, 1994.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, Box 21668, Juneau, AK 99802, Attention: Lori Gravel. Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for the proposed action may also be obtained from this address.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, Fisheries Management Division, (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by operators of U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) management area is managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 675. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

At times, amendments to regulations are necessary for conservation and management of the groundfish fisheries. This regulatory amendment proposes to require two NMFS-certified observers on processor vessels, one or more observers in shoreside processing operations, and one observer on catcher vessels delivering to processors. In addition, processor vessels would be required to have either measured, marked, and certified fish receiving bins to improve volumetric estimates of total catch, or scales to weigh total catch. A description of, and reasons for, these actions follow.

Under regulations at § 675.27, 7.5 percent of the pollock total allowable catch in the BSAI management area is allocated to the Western Alaska CDQ reserve. The CDQ program is intended to help develop commercial fisheries in western Alaska communities. Organizations representing eligible western Alaska communities submit a Community Development Plan (CDP) for approval by the Governor of Alaska and the Secretary. A portion of the overall pollock CDQ reserve is assigned to each approved CDP. Established fishing companies and their harvesting or processing vessels and plants harvest and process these CDP quota allocations either by purchasing the fish outright or by entering into partnerships with the CDPs. Approximately 97,300 metric tons (mt) of pollock were harvested during the 1992 CDQ fisheries. This harvest had an estimated gross wholesale value of about $44 million. Processors paid about $20 million to the CDPs in compensation.

The CDQ fisheries require more intensive quota monitoring by NMFS than do the open access groundfish fisheries. Operators of vessels participating in the CDQ fisheries are allowed to harvest only a specific proportion of a CDP recipient's allocation, and then their fishing activities must cease. In this case, the fishing activity and the earnings of these vessels or processors are dependent exclusively on their own harvest of pollock rather than on the attainment of an overall quota or prohibited species bycatch limit by a fishing fleet, as is the case in the open access fisheries.

Processor weekly production reports, which are required by 50 CFR 675.5, have been the basis of quota monitoring in many groundfish fisheries. Comparison of observer and processor weekly production estimates of total catch has shown observer estimates to be systematically higher. For this reason, NMFS has adopted the "best blend" system of estimating total groundfish harvests. The "best blend" compares estimates of total catch based on the processor weekly production reports with estimates of total catch made by the observers. The higher of the two estimates is selected unless the observer estimate is within 5 percent of the estimate based on the processor weekly production report, in which case the estimate based on the processor's report is selected. The "best blend" has resulted in NMFS's selecting observer estimates of total catch as the best approximation of total catch in many cases.

While the "best blend" continues to be the preferred method of estimating total catch in the open access fishery, NMFS believes that more accurate estimates of pollock harvests in the CDQ fisheries must be obtained. However, one observer as presently required cannot independently estimate the total weight and composition of all catches by a vessel and, on many processor vessels, observers do not have adequate tools to make consistent independent volumetric estimates of total catch.

Observers aboard catcher/processor trawl vessels and motherships receiving groundfish from trawl vessels make an independent volumetric estimate of as much of the total harvest as possible. The total catch is estimated by either estimating the volume of the codend or the volume of fish placed in receiving bins prior to sorting or discard. The total weight of groundfish is estimated by multiplying the estimated volume by a density factor. Catch composition sampling is used to estimate the weight of each species in the total catch. A single observer is able to estimate independently the total catch for 60 to 70 percent of the individual trawl net recoveries, or hauls, but must rely on processor logbook or production records to estimate the remaining harvest. Two observers, as the proposed rule would require to be aboard a processor vessel in the CDQ fishery, will be able to estimate total catch without having to rely on processor log books or production records.

Using the estimated volume of the codend to estimate total catch has the greatest potential for inaccuracy because of the difficulty in accurately determining the size and shape of the codend. NMFS believes that fish holding bins of known dimensions offer a much better alternative for making volumetric estimates. However, many of the processor vessels in the CDQ fisheries do not have bins that are accessible to the observer, or the observer does not know the capacity of each bin. NMFS is proposing requiring that processor vessels participating in the CDQ fisheries be equipped with receiving bins in which all fish catches are placed prior to sorting operations to allow observers to make more accurate estimates of the volume of fish in a bin. Such bins would have to be accurately measured with reasonably spaced marks to minimize errors when the observer estimates the amount of fish between

marks. The bins must be well lighted so the observer can see the marks from outside the bin to determine the volume of fish. Refrigerated seawater (RSW) tanks could only be used for volumetric estimates of total catch if the estimates are made before water is added to these tanks.

Public comment is sought on the feasibility of using ultrasonic level controls or "bin sensors" to determine the level of fish in a bin for volumetric estimates of total catch weight. This technology has been suggested by industry, and information is requested on its application and use for this purpose.

NMFS believes that scales more accurately measure total catch weight than do volumetric estimates. Therefore, as an alternative to volumetric measurements, NMFS proposes to allow processors to weigh CDQ harvests. To date, only one catcher/processor is equipped with a scale capable of accurately weighing all fish harvested.

NMFS is proposing to require shoreside processors to weigh CDQ harvests. Most shoreside plants are equipped with a scale capable of accurately weighing groundfish delivered by harvesting vessels.

This proposed rule would allow the CDPs and NMFS to monitor pollock CDQs on the basis of observer estimates of total catch and catch composition as reported in the observer's daily catch message rather than on the "best blend" system. It would be the responsibility of the CDP representative to arrange for the processor to transmit the observer's daily catch message to the CDP representative. The CDP representatives would be required to monitor the pollock CDQ harvests and notify processors to cease fishing operations when their allocation of pollock has been harvested. If NMFS determines that the observer, the processor, or the CDQ representative failed to follow the correct procedures to estimate the total harvest of pollock, NMFS could in its discretion estimate the total pollock harvest based on the best available data. Although CDQs would be monitored based on observer daily catch messages, all processors would be required to meet the recordkeeping and reporting requirements at §§ 675.5 and 675.27(g).

The proposed regulations on shoreside processing operations would authorize the Regional Director to require a shoreside processor plant to increase its observer coverage beyond the one already required if one observer cannot adequately monitor all CDQ deliveries.

The proposed regulations for a catcher vessel delivering groundfish harvested under a CDQ would require the catcher vessel regardless of length, other than a catcher vessel delivering unsorted codends to a processor or another vessel, to have a NMFS-certified observer on board at all times. Increased observer coverage on the catcher vessels is required to monitor at-sea discards.

The cost for additional observers required by this rule would fall on processor and catcher vessels. All processor vessel operators who have participated in CDQ fisheries to date have had to carry one observer; in the future, these processors will pay the cost of an additional fulltime observer during the CDQ fisheries. Vessels less than 60 feet that are not required to have observer coverage in the open access fisheries and vessels from 60 to 124 feet that are required to have 30 percent observer coverage will be required to have 100 percent observer coverage in the CDQ fisheries. Observer coverage costs for shoreside processing operations will not change from that of the open access fisheries because observer coverage will continue to be based on the volume of groundfish processed.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has initially determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable laws.

NMFS prepared an environmental assessment (EA) for this proposed rule that discusses the impacts on the environment as a result of this rule. The proposed action affects the measurement of total catch in the CDQ fisheries but does not affect the total allowable catch of pollock. It is not likely to result in changes in fishing patterns. To the degree total catch is estimated more accurately for these fisheries, data used for quota monitoring and stock assessments are improved. A copy of the EA is available (see ADDRESSES).

NMFS prepared an RIR that analyzes the cost and benefits of the proposed action, the social and economic impacts, and the effect on State and local governments. A copy of the RIR is available (see ADDRESSES).

The AA has initially determined that this proposed rule, if adopted, could have a significant economic impact on a substantial number of small entities (i.e., small businesses, small organizations, and small governmental jurisdictions with limited resources).

A summary of the EA/RIR/IRFA is provided as follows. These proposed regulations will affect most processors and harvesting vessels that participate in CDQ fisheries in the future. The primary impact will be on the owners of processor vessels who must increase their observer coverage, modify their vessels, and possibly purchase new equipment. However, processors participating in the pollock CDQ fisheries generally have annual gross receipts over $2 million and are not considered small entities. The IRFA concluded that Western Alaska communities that are apportioned pollock CDQs and catcher vessels participating in the fishery are considered small entities. To the extent that processors can pass on the increase in operating costs from additional observers, certified bins, or scales, returns to the Western Alaska community groups may be significantly reduced. In addition, the requirement of additional observer coverage may significantly increase operating costs for some of the catcher vessels.

The cost of modifying the fish receiving bins on the processor vessels will depend on modification necessary to make the bins visually accessible to the observer, but may range upwards from about $4,000 per vessel.

Scales cost a minimum of $40,000 to purchase. In addition to the purchase price, the factory must be redesigned to accommodate the scale. The cost of factory refitting and installation of the scale would depend on the individual processor vessel configuration but would be a minimum of several thousand dollars.

Twelve catcher/processor vessels were expecting to harvest the 1993 CDQ allocation in about 436 fishing days (an average of 36 days per processor). Additional observer coverage for these processor vessels is estimated to cost about $183 per day, $6,600 ($183 × 36 days), or $79,200 for the 12 vessels.

The cost of observer coverage on catcher vessels in the CDQ fisheries is difficult to predict. It will depend on the number of vessels and the CDQ fishing days. Thirteen catcher vessels participated in the 1992 CDQ fishery for a total of 361 days (from December 4–31, 1992). Observer coverage for these vessels cost about $64,000 ($183 × 351 days). No catcher vessels were expected to participate in the 1993 CDQ fishery; however, one catcher vessel has reported CDQ landings at a shore processing plant. This vessel fished for 5 days and paid about $915 for observer coverage.

Two observers and certified bins would be a minimum of $10,600 per processor vessel or $127,200 for 12 processor vessels. The cost of two

observers and a scale would be a minimum of $46,600 per processor vessel or $559,200 for 12 processor vessels.

A copy of this analysis is available (see **ADDRESSES**).

This rule contains new collection-of-information requirements subject to the Paperwork Reduction Act that have been approved by the Office of Management and Budget. The public's reporting burden for each requirement is indicated in the following description and includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The new reporting requirements are: (1) CDQ managing organizations must arrange for processors to transmit copies of observer daily catch messages in such a manner that allows the CDQ managing organization to inform processors to cease fishing operations before the CDQ allocations have been exceeded (5 minutes per message); (2) scale printouts of each CDQ delivery must be maintained in the processing operation for the duration of the fishing year or for as long after a fishing year that the fish product produced from fish harvested during that year is retained in the processing operation (8 minutes per delivery day); (3) the volumes of receiving bins aboard processing vessels must be certified in writing by an independent registered engineer (8 hours); and shoreside processors must notify the observers of the offloading schedule of each CDQ groundfish delivery at least 1 hour prior to offloading (2 minutes). Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503 (Attn: NOAA Desk Officer).

NMFS has determined that this rule does not directly affect the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

A formal section 7 consultation under the Endangered Species Act was not initiated for the proposed rule because none of the alternatives are expected to have any adverse effect on endangered or threatened species or their habitat.

The Regional Director determined that fishing activities conducted under this rule would have no adverse impacts on marine mammals.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: December 20, 1993.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is proposed to be amended as follows:

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for 50 CFR part 675 continues to read as follows:

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

2. In § 675.27, paragraph (e)(4) is revised and a new paragraph (h) is added to read as follows:

§ 675.27 Western Alaska Community Development Quota Program (applicable through December 31, 1995).

* * * * *

(e) * * * *

(4) It is the responsibility of the CDQ managing organization to cease fishing operations once its respective pollock CDQ allocation has been reached. Total pollock harvests for each CDP will be determined by observer estimates of total catch and catch composition as reported on the daily observer catch message. The CDQ managing organization must arrange for processors to transmit a copy of the observer daily catch message to it in a manner that allows the CDQ managing organization to inform processors to cease fishing operations before the CDQ allocation has been exceeded. CDQ managing organization representatives must also inform NMFS within 24 hours after the CDQ has been reached and fishing has ceased. If NMFS determines that the observer, the processor, or the CDQ managing organization failed to follow the procedures described in paragraph (h) of this section for estimating the total harvest of pollock, or violated any other regulation in part 675, NMFS reserves the right to estimate the total pollock harvest based on the best available data.

* * * * *

(h) *Estimation of total harvest in the CDQ fisheries.*—

(1) *Observer coverage.* Vessel operators and processors participating in CDQ fisheries must comply with the following requirements for observer coverage:

(i) Each shoreside processing operation participating in the CDQ fisheries must have one NMFS-certified observer present at all times while groundfish harvested under a CDQ are being received or processed. The Regional Director is authorized to require more than one observer for a shoreside processing operation if:

(A) The CDQ delivery schedule requires an observer to be on duty more than 12 hours in a 24-hour period;

(B) Simultaneous deliveries of CDQ harvests by more than one vessel cannot be monitored by a single observer; or

(C) One observer is not capable of adequately monitoring CDQ deliveries;

(ii) Each processor vessel participating in the CDQ fisheries must have two NMFS-certified observers aboard the vessel at all times while groundfish harvested under a CDQ are being harvested, processed, or received from another vessel;

(iii) Each catcher vessel delivering groundfish harvested under a CDQ, other than a catcher vessel delivering only unsorted codends to a processor or another vessel, must have a NMFS-certified observer on the vessel at all times while the vessel is participating in the CDQ fisheries regardless of the vessel length. Observer coverage requirements for catcher vessels participating in the CDQ fisheries is in addition to any observers required by § 675.25.

(2) *Equipment and operational requirements.* (i) Each shoreside processing operation participating in the CDQ fisheries must comply with the following requirements:

(A) Each shoreside processing operation must weigh and record groundfish harvested in the CDQ fisheries on a scale certified by the State of Alaska. Such scale must measure catch weights at all times to at least 95 percent accuracy as determined by a NMFS-certified observer or authorized NMFS or U.S. Coast Guard enforcement officer. The scale and scale display must be capable of being viewed simultaneously by the observer;

(B) Observers must be provided access to the scale used to weigh groundfish landings;

(C) Printouts of scale measurements of each CDQ delivery must be made available to observers and be maintained in the shoreside processing operation for the duration of the fishing year or for as long after a fishing year that fish product produced from fish harvested during that year are retained in the shoreside processing operation; and

(D) The manager of each shoreside processing operation must notify the observer(s) of the offloading schedule of each CDQ groundfish delivery at least 1 hour prior to offloading to provide the observer an opportunity to monitor the weighing of the entire delivery.

(ii) Each processor vessel participating in the CDQ fisheries must either estimate its total weight by the volumetric procedures specified in paragraph (h)(2)(ii)(A) or must weigh its catch in accordance with the procedures under (h)(2)(ii)(B) of this section.

(A) *Volumetric measurements of total catch.* (*1*) Each processor vessel estimating its catch by volumetric measurement must have one or more receiving bins in which all fish catches are placed for purposes of determining total catch weight prior to sorting operations.

(*2*) The volume of each bin must be accurately measured, and the bin must be permanently marked and numbered in 10-centimeter increments on all internal sides of the bin. Marked increments must be readable from the outside of the bin at all times. Bins must be lighted in a manner that allows marked increments on each side of the bin to be read from the outside of the bin by a NMFS-certified observer or authorized officer.

(*3*) The location of bin markings as certified must be described in writing. Tables certified under paragraph (h)(2)(ii)(A)(*2*) indicating the volume of each certified bin in cubic meters for each 10-centimeter increment marked on the sides of the bins must be submitted to the NMFS Observer Program prior to harvesting or receiving groundfish and must be maintained aboard the vessel and made available to NMFS-certified observers at all times. All bin certification documents must be dated and signed by the certifier.The bin volume and marked and numbered increments must be certified by a registered engineer with no financial interest in fishing, fish processing, or fish tender vessels, or by a qualified organization that has been designated by the U.S. Coast Guard Commandant, or an authorized representative thereof, for the purpose of classing or examining commercial fishing industry vessels under the provisions of 46 CFR 28.76. Bin volumes and marked and numbered increments must be recertified each time a bin is structurally or physically changed.

(*4*) Vessel operators must notify observers prior to any removal or addition of fish from each bin used for volumetric measurements of catch in such a manner that allows an observer to take bin volume measurements prior to fish being removed from or added to the bin. Once a volumetric measurement has been taken, additional fish may not be added to the bin until at least half the original volume has been removed. Fish cannot be removed from or added to a bin used for volumetric measurements of catch until an observer indicates that bin volume measurements have been completed and any samples of catch required by the observer have been taken.

(*5*) Fish from separate hauls or deliveries from separate harvesting vessels must not be mixed in any bin used for volumetric measurements of catch.

(B) *Scale weight measurements of total catch.* (1) Any scale used on each processor vessel to weigh groundfish harvested in the CDQ fisheries must measure catch weights to at least 95 percent accuracy at all times as determined by a NMFS-certified observer or authorized NMFS or U.S. Coast Guard enforcement officer. The scale must be equipped with a functional motion compensation device to account for vessel acceleration, roll, pitch and vibration movement. The scale and scale display must be capable of being viewed simultaneously by the observer.

(*2*) Printouts of scale measurements of each haul weight must be made available to the observer and be maintained on board the vessel for the duration of the fishing year or for as long after a fishing year that fish product produced from fish harvested during that year are retained aboard a vessel.

(*3*) The catch from each haul must be kept separate such that the scale weight can be obtained separately for each haul.

[FR Doc. 93–31416 Filed 12–23–93; 8:45 am]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 58, No. 246
Monday, December 27, 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 COMMERCE

Evaluation of State Coastal Management Programs

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Alabama and Hawaii Coastal Management Programs.

These evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of coastal states with respect to coastal management. Evaluation of Coastal Management Programs requires findings concerning the extent to which a state has adhered to the CMP approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Alabama Coastal Management Program evaluation site visit will be from January 31, to February 4, 1994. A Public Meeting will be held Wednesday, February 2, 1994, at 7 p.m., at the Killian Room, in the International Trade Center, 250 Water Street, Mobile, Alabama, 36602.

The Hawaii Coastal Management Program evaluation site visit will be from February 7–11, 1994. A Public Meeting will be held Tuesday, February 8, 1994, at 7 p.m., at Kealakehe Intermediate School, 74–5062 Onipa'a Street, Kailua-Kona, Hawaii 96740.

Each state, or Territory, will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the site visit. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3090.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Dated: December 20, 1993.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 93–31417 Filed 12–23–93; 8:45 am]

BILLING CODE 3510–08–M

International Trade Administration

[A–428–062]

Animal Glue From Germany; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on animal glue from Germany.

Domestic interested parties who object to this revocation must submit their comments in writing no later than thirty days from January 26, 1994.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Dennis Askey or Wendy Frankel, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1977, the Treasury Department published an antidumping finding on animal glue from Germany (42 FR 64115). The Department has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than thirty days from December 27, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

No interested parties requested an administrative review in accordance with the Department's notice of opportunity to request administrative review by the end of the anniversary month. If domestic interested parties do not object to the Department's intent to revoke within thirty days from December 27, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: December 20, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–31481 Filed 12–23–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–351–602]

Butt-Weld Pipe Fittings From Brazil; Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on butt-weld pipe fittings from Brazil.

Domestic interested parties who object to this revocation must submit their comments in writing no later than thirty days from December 27, 1993.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Diminich or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1986, the Department of Commerce (the Department) published an antidumping duty order on butt-weld pipe fittings from Brazil (51 FR 45152). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than thirty days from December 27, 1993. Domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

No interested parties requested an administrative review in accordance with the Department's notice of opportunity to request administrative review by the end of the anniversary month. If domestic interested parties do not object to the Department's intent to revoke within thirty days from December 27, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: December 20, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–31480 Filed 12–23–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–091]

Large Electric Motors From Japan; Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on large electric motors from Japan.

Domestic interested parties who object to this revocation must submit their comments in writing no later than December 27, 1993.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Elizabeth Urfer or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On December 24, 1980, the Department of Commerce (the Department) published an antidumping duty order on large electric motors from Japan (45 FR 84994). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than December 23, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

No interested parties requested an administrative review in accordance with the Department's notice of opportunity to request administrative review by the end of the anniversary month. If domestic interested parties do not object to the Department's intent to revoke within thirty days from December 27, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: December 20, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–31485 Filed 12–23–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–582–501]

Photo Albums From Hong Kong; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on photo albums from Hong Kong.

Domestic interested parties who object to this revocation must submit their comments in writing no later than thirty days from December 27, 1993.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: David Levy or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1985, the Department of Commerce (the Department) published an antidumping duty order on photo albums from Hong Kong (50 FR 43751). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than thirty days from December 27, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

No interested parties requested an administrative review in accordance with the Department's notice of opportunity to request administrative review by the end of the anniversary month. If domestic interested parties do not object to the Department's intent to revoke within thirty days from December 27, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: December 20, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–31482 Filed 12–23–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–401–004]

Staples and Staple Machines From Sweden; Intent to Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on staples and staple machines from Sweden.

Domestic interested parties who object to this revocation must submit their comments in writing no later than December 27, 1993.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Kim Moore or Tom Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 1983, the Department of Commerce (the Department) published an antidumping duty order on staples and staple machines from Sweden (48 FR 56250). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than thirty days from December 27, 1993 domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

No interested parties requested an administrative review in accordance with the Department's notice of opportunity to request administrative review by the end of the anniversary month. If domestic interested parties do not object to the Department's intent to revoke within thirty days from December 27, 1993, publication in the Federal Register we shall conclude that the order is no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: December 20, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–31486 Filed 12–23–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–068]

Steel Wire Strand From Japan; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on steel wire strand from Japan.

Domestic interested parties who object to this revocation must submit their comments in writing no later than thirty days from December 27, 1993.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Kris Campbell or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 483–4733.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1978, the Treasury Department published an antidumping finding on steel wire strand from Japan (43 FR 57599). The Department has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity To Object

No later than thirty days from December 27, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

No interested parties requested an administrative review in accordance

with the Department's notice of opportunity to request administrative review by the end of the anniversary month. If domestic interested parties do not object to the Department's intent to revoke within thirty days from December 27, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: December 20, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–31484 Filed 12–23–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–014]

Tuners From Japan; Intent to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on tuners from Japan.

Domestic interested parties who object to this revocation must submit their comments in writing no later than thirty days from December 27, 1993.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Lisa Raisner or Tom Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1970, the Treasury Department published an antidumping finding on tuners from Japan (35 FR 18914). The Department has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than thirty days from December 27, 1993 domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

No interested parties requested an administrative review in accordance with the Department's notice of opportunity to request administrative review by the end of the anniversary month. If domestic interested parties do not object to the Department's intent to revoke within thirty days from December 27, 1993 we shall conclude that the order is no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: December 20, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–31483 Filed 12–23–93; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Interagency Environmental Technology Strategy Working Group; Request for Comments

ACTION: Notice.

SUMMARY: The Climate and Global Change Program Office is supporting the establishment of an ad hoc interagency Environmental Technology Strategy Working Group for the White House Office of Science and Technology Policy (OSTP). This group will formulate a comprehensive Administration strategy for encouraging innovation, commercialization and diffusion of environmental technologies. The working group will integrate and build on earlier work by the interagency working group on environmental technology exports and the activities of the Environmental Technology Initiative headed by the Environmental Protection Agency. The working group plans to develop the Administration's Environmental Technology Strategy and is seeking information from private sector organizations, including industry, academia, non-profit and non-government organizations. Written comments are requested.

DATES: Request response no later than Wednesday, January 19, 1994.

ADDRESSES: Technology Strategy, Environment Division, Office of Science and Technology Policy, Executive Office of the President, Old Executive Office Building 494, Washington, DC 20500.

SUPPLEMENTARY INFORMATION: The Working Group has adopted the following definition for environmental technology:

Environmental Technology: Any technology, system or service designed, developed and operated for the primary purpose of addressing an environmental issue so as to reduce residual risk or costs, and/or improve process efficiency. The word "technology" is intended to include hardware, software, systems and services. Four major categories are included within this definition:

Pollution Avoidance: Pollution prevention and waste minimization technologies that avoid production of environmentally hazardous substances. These include equipment, processes, and process sensors and controls designed to prevent or minimize the generation of pollutants and hazardous substances, as well as technologies used in product substitution or recycling and recovery of useful raw materials, products, and energy from waste streams.

Pollution Control: Technologies that render pollutants less harmful before they enter the environment. These include the treatment of pollutants to eliminate or reduce environmental and health hazards, or the reduction of pollutant volume or mobility to make subsequent management more effective.

Remediation and Restoration: Technologies that render hazardous substances less harmful after they enter the environment. Examples include eradication, encapsulation, and other cleanup technologies that either remove the risks associated with hazardous wastes or make them more manageable. Restoration technologies embody methods designed to improve ecosystems that have declined due to natural or anthropogenic effects, restoring and sustaining the natural ecosystems and improving their contributions to other ecosystems, human population and global cycles. Examples include reforestation and the creation of wetlands and artificial reefs.

Monitoring and Assessment: Technologies used to establish, evaluate, and monitor the condition of the environment, including releases of pollutants. These include the design, development and operation of monitoring equipment with associated

quality assurance and risk evaluation aspects.

OSTP is seeking public comment and responses from the private sector to the following items:

1. What are the most significant barriers to innovation, development and diffusion of environmental technology? In what ways can government policies eliminate or minimize these barriers? Where possible, please indicate examples of successful government-industry interaction in this area, including interaction in other countries.

2. What long-term goals or strategies do you think the Federal government and/or the private sector should pursue in the area of environmental technology?

3. In what areas of environmental technology are you involved? Please discuss your major activities.

4. What international activities does your organization have in environmental technologies? (e.g., exports; licensing arrangements, sale or purchase of technology, other forms of technology transfer such as testing or R&D overseas; joint venture or partial ownership stakes). In what ways does overseas presence aid or alter development and commercialization of new products or services?

Dated: December 17, 1993.

J. Michael Hall,

Director, Office of Global Programs, National Oceanic Atmospheric Administration.

[FR Doc. 93–31292 Filed 12–23–93; 8:45 am]

BILLING CODE 4310–12–M

Patent and Trademark Office

Economics and Statistics Administration, Technology Administration; Public Hearings and Request for Comments on Economic Aspects of the U.S. Patent System

AGENCIES: Patent and Trademark Office; Economics and Statistics Administration; Technology Administration; Department of Commerce.

ACTION: Notice of hearings and request for public comments.

SUMMARY: The Patent and Trademark Office (PTO), the Economics and Statistics Administration (ESA), and the Technology Administration (TA) of the Department of Commerce are conducting a review of certain aspects of domestic and foreign intellectual property systems. As part of their review, these agencies are interested in obtaining public input on issues associated with the balance of rights between patent owners and the public with regard to research-oriented use of patented technology. Interested members of the public are invited to testify at public hearings and to present written comments on any of the topics outlined in the supplementary information section of this notice.

DATES: A public hearing will be held on January 25, 1994, at the San Jose Convention Center, 408 Almaden Avenue, San Jose, California. Those wishing to present oral testimony at the hearing must request an opportunity to do so no later than January 20, 1994. Written comments on topics presented in the supplementary information section of this notice should be received by the PTO on or before March 1, 1994.

ADDRESSES: Those interested in presenting written comments on the topics contained in the supplementary information, or any other related topic, should address their comments to the Commissioner of Patents and Trademarks, marked to the attention of Jeff Kushan. Comments submitted by mail should be sent to Commissioner of Patents and Trademarks, Box 4, Patent and Trademark Office, Washington, DC 20231. Comments can be sent by electronic mail to Internet address "comments-exp-use@uspto.gov." Comments may also be submitted by telefax at (703) 305–8885. Written comments should include the following information:

—Name and affiliation of the individual responding;

—An indication of whether comments offered represent views of the individual's organization or are the respondent's personal views; and

—If applicable, the nature of the respondent's organization, including the size, type of organization (e.g., business, trade group, university, non-profit organization) and principal areas of business or research activity

Parties offering testimony or written comments are asked to provide their comments in machine readable format in one of the following file formats: ASCII text, WordPerfect for DOS version 4.2 or 5.x, WorldPerfect for Windows version 5.x, Word for Windows version 1.0 or 2.0, Word for DOS version 5.0, Word for Macintosh version 3.0, 4.0 or 5.x, or WordPerfect for Macintosh version 2.x.

Persons wishing to testify must notify Jeff Kushan no later than January 20, 1994. Mr. Kushan can be reached by mail sent to his attention addressed to the Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231; by phone at (703) 305–9300; or by telefax at (703) 305–8885. No requests to testify will be accepted through electronic mail.

Written comments and transcripts of the hearings will be available for public inspection no later than January 30, 1994, in room 902 of Crystal Park Two, 2121 Crystal Drive, Arlington, Virginia. Persons wishing to obtain a machine readable copy of the transcripts and public comments should contact Jeff Kushan at the address listed below.

FOR FURTHER INFORMATION CONTACT: Jeff Kushan by telephone at (703) 305–9300, by fax at (703) 305–8885, by electronic mail at kushan@uspto.gov, or by mail marked to his attention addressed to the Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION:

I. Background

The intellectual property systems in the United States have been designed to promote innovation, creative expression and fair competition. These systems of protection, including patents, copyrights, trademarks and trade secret protection, have proven flexible enough to handle rapid advances in technology and dramatic changes in business practices. However, periodic adjustments to certain aspects of these intellectual property systems have been necessary to ensure their continued usefulness in promoting the respective fields of activity each type of protection was designed to encourage.

A question that has attracted much recent attention is the balance of rights between holders of patent rights and the general public regarding research-oriented use of patent protected technology. The question has become complicated by the increasingly close relationships that are developing between industry, Government and universities. Adding to this is the increased pace of innovation, which brings with it an increasingly compressed period between groundbreaking or landmark innovations. The question of balance, however, is central to the basic objectives of the patent system.

A primary objective of the patent system is the promotion not only of innovation but also of public disclosure of inventions. The patent system functions by providing a seventeen-year period of exclusive rights authorizing the patent holder to prohibit others from making, using or selling the patented invention, as it is defined in the patent, in exchange for a full public disclosure of the invention. This grant of exclusivity serves as the primary incentive for inventors to publicly

disclose their inventions. The public benefits through this arrangement immediately via the publication of information regarding the invention and eventually through dedication to the public of the right to use the invention described in the patent.

Thus, a key aspect of the public value of patent disclosures is the immediate public access to information contained in the patent document for purposes of further research and development in the field of technology of the patented invention. Implicit in the public disclosure role of the patent system is the idea that the public will not only be able to use, in some fashion, the information contained in the patent document, but will also be given some discretion in using the patented invention itself so that it can be fully understood. Yet, other than limited provisions allowing for testing of patented pharmaceutical products for purposes of regulatory approval (e.g., § 271(e)(1) of title 35, United States Code), existing law does not provide a general, statutory defense against a charge of infringement for experimental use of patented technology.

Despite this, the Federal courts have recognized a limited defense to a charge of patent infringement based on use of the patented technology for experimental purposes. This defense, referred to as the experimental use defense, has been raised infrequently, and when considered has been construed very narrowly. There are few cases elaborating the nature of the defense, primarily because patent rights are not frequently enforced against members of the public that use the patented technology for purely experimental purposes. In these cases, the courts have not recognized the defense where the accused infringer has engaged in use of the patented invention for purposes of commercially exploiting the invention, rather than for increasing their understanding of the invention. In cases where the defense has been raised successfully, the experimental use in question was to ascertain how the invention functioned or for purely philosophical or academic reasons.

[Note: A good summary of the experimental use exception can be found in section IV, part chapter 9 of House Report 100–888 (100th Congress, 2d Session).]

The increasingly close relationships between industrial, governmental and university researchers has heightened sensitivity to the commercial implications of basic, as opposed to applied, research. This, in turn, has led to questions regarding the use of patented technology in a research context. This has special implications in research-intensive industries like the pharmaceutical and biotechnological industries, which tend to be high-risk, capital intensive and intensely competitive. Many companies in these industries view clearly defined and understood patent rights as being critical to their commercial success. As a result, such companies aggressively pursue and enforce patent rights to protect their often significant financial investments. However, central to the success of these industries is access to and use of information regarding both significant and incremental advances in science and technology. Experimentation on patented products and processes in these industries often is essential to understanding the nature and significance of these advances. These factors have led to some degree of uncertainty in the research communities regarding use of information and technology disclosed in and protected by patents. This, in turn, has led to calls for a better understanding and possible clarification of the basic balance of rights with respect to research-oriented use of patented technology.

II. Topics for Discussion

The hearing will address the following topics:

—Justifications and rationale for or against an experimental use defense to patent infringement;

—Desirable characteristics of an experimental use defense to patent infringement; and

—Justifications for or against a statutory experimental use defense to patent infringement.

The topics will be explored through a series of questions to which interested members of the public are invited to respond.

[Note: The following questions have been developed with the intent of framing in a neutral fashion a discussion of research-oriented use of patented inventions. The topics have been selected to provide an opportunity for members of academia, industry, Government and the bar to provide their input on the treatment of research activity under current patent law as well as their ideas and suggestions for changes, if viewed as necessary, to the current patent system. Parties responding to these questions are asked to provide the basis for their conclusions offered, and, where possible, to provide their actual experiences in dealing with patent enforcement in the context of research-oriented use of patented technology.]

Topic A. Justifications and Rational for or Against an Experimental Use Defense to Patent Infringement

1. Considering the goals of the patent system of encouraging innovation and public disclosure of inventions, what economic rationale can be cited in support of or against recognizing a defense to a claim of patent infringement based on experimental use of a patented invention?

2. What gains or losses to levels of basic research, inventive activity and investment in research-intensive industries, if any, would you expect to occur if the nature of the present experimental use defense to infringement was modified?

[Note: Parties commenting on this question are invited to comment on the effect of the current patent system on research and development activities, and then to comment on possible effects of a more expansive or restrictive experimental use defense on these activities.]

Topic B. Desirable Characteristics of an Experimental Use Defense to Patent Infringement

1. What activities by an entity conducting research involving a patented invention should not require the authorization of the patent owner?

2. What activities by an entity conducting research involving a patented invention should give rise to liability for infringement?

[Note: for questions B–1 and B–2, please consider:]

The implications of your conclusions for patented products and processes that are to be used primarily as research tools, and

Whether a distinction should be made between commercially-oriented research (e.g., directed at production of a specific commercial product or process) and non-commercially-oriented research (e.g., basic academic research with no specified commercial target) regarding the availability of the defense?]

Topic C. Justifications for or Against a Statutory Experimental Use Defense to Patent Infringement

1. Is there a need for a statutory exception to liability for patent infringement based on experimental use of a patented invention?

2. If your answer to question 1 is "yes", how would you define such an exception?

III. Guidelines for Oral Testimony

Individuals wishing to testify must adhere to the following guidelines:

1. Anyone wishing to testify at the hearings must request an opportunity to do so no later than January 20, 1994. No one will be permitted to testify without prior approval.

2. Requests to testify must include the speaker's name, affiliation (if any), phone number, fax number (if available), mailing address, and the questions in each topic that the speaker intends to address in his or her testimony.

3. Time allocated to each speaker will be determined after the final number of speakers has been determined.

4. Speakers must provide a written copy of their testimony for inclusion in the record of the proceedings no later than January 25, 1994.

5. Speakers must adhere to guidelines established for testimony. These guidelines will be provided to all speakers no later than January 21, 1994.

A schedule providing approximate times for testimony will be provided to all speakers no later than the morning of January 25, 1994. Speakers are advised that the schedule for testimony will be subject to change during the course of the hearings.

IV. Other Information

For information regarding accommodations in the San Jose area, or for information regarding the San Jose Convention Center facilities, individuals can contact Joseph R. Hedges of the Office of Economic Development of the City of San Jose. Mr. Hedges can be reached by phone at (408) 277–5880; by fax at (408) 277–3615; or by mail addressed to 50 West San Fernando Street, Suite 900, San Jose, California 95113.

Dated: December 17, 1993.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

Dated: December 17, 1993.

Mary Lowe Good,

Under Secretary for Technology.

Dated: December 17, 1993.

Paul A. London,

Acting Under Secretary for Economic Affairs.

[FR Doc. 93–31415 Filed 12–23–93; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa and Certification Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

December 21, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa and certification requirements to require manufacturer's identification.

EFFECTIVE DATE: February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa arrangement between the Governments of the United States and the Dominican Republic is being amended, for goods produced or manufactured in the Dominican Republic and exported from the Dominican Republic on and after February 1, 1994, to require that the complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa or certification be provided on the textile visaed or certified document.

The name and address of the company should be placed somewhere on the front of the original export visaed or certified document, not within the visa or certification stamp. It should be preceded by the label "manufacturer's identification" or "M.I.D." The name is the full name of the company which performs the substantial part of the manufacturing of the product. The address should include the street name or P.O. Box number (if available), and the city and/or province where the manufacturing occurs. In the case of a shipment covered by a single export visaed or certified document containing products which are each manufactured by a number of different companies, the name and address of each company involved should be listed on the export visaed or certified document. If additional space is needed for listing the name and address of the firms, the back of the export visaed or certified document may be used. Responsible officials will make their best efforts to determine the name and address of a firm or firms which best meet the basic criterion of being an actual manufacturer of the product. This information should appear on the export visaed or certified document prior to export from the Dominican Republic. However, for goods exported during the period February 1, 1994 through February 28, 1994, the importer may type this required information on the front of the original visaed or certified document. For goods exported on or after March 1, 1994 without the M.I.D. on the export visaed or certified document, a new visaed or certified document containing this information must be obtained.

See 52 FR 6594, published on March 4, 1987.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 21, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 27, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic which were not properly visaed by the Government of the Dominican Republic.

Effective on February 1, 1994, for goods produced or manufactured in the Dominican Republic and exported from the Dominican Republic on and after February 1, 1994, you are directed to require that the complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa or certification be placed on the textile visaed or certified document. This information shall appear on the export visaed or certified document prior to export from the Dominican Republic. However, for goods exported during the period February 1, 1994 through February 28, 1994, the importer may type this required information on the front of the original visaed or certified document.

Shipments entered for consumption, or withdrawn from warehouse for consumption according to this directive which are not accompanied by an appropriate export visa or certification which includes the identification of the manufacturer on the visaed or certified document shall be denied entry and a new visa or certification containing this information must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–31487 Filed 12–23–93; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 28, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 6, October 29, November 5, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 42055, 58156 and 59015) of the proposed addition to the Procurement List.

After consideration of the material presented to it concerning the capability of qualified nonprofit agencies to provide the services, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Commissary Shelf Stocking and Custodial
Naval Air Station
Meridian, Mississippi

Grounds Maintenance
Naval and Marine Corps Reserve Center
Dayton, Ohio

Janitorial/Custodial
Naval Air Station
Lemoore, California

Janitorial/Custodial
U.S. Post Office and Courthouse
115 Hancock Avenue
Athens, Georgia

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. 93–31501 Filed 12–23–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List bookcases to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 26, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 8, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (58 F.R. 52478) of the proposed addition of these bookcases to the Procurement List.

Comments were received from the current contractor for the bookcases during the development phase of this proposed addition to the Procurement List. The commenter provided information to support its claim that addition of the total Government requirement for the bookcases to the Procurement List would have severe adverse impact on the company. In order to reduce the impact, the Committee has decided to add only the Government requirement for GSA Supply Zone 1 to the Procurement List. The impact of adding only this portion of the Government requirement to the Procurement List will be substantially less than if the entire Government requirement were added. The Committee does not consider the loss of sales for this lesser portion of the Government requirement to constitute severe adverse impact on the commenter.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to produce the commodities, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Bookcase, Steel, Contemporary

7110–00–601–9821
7110–00–601–9822
7110–01–135–1997
7110–01–135–1998
(Requirements for GSA Zone 1 only)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. 93–31502 Filed 12–23–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 28, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on the current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List for production by the nonprofit agency listed:

Commodities

Tool Box, Portable

5140–00–388–3416
Nonprofit Agency: Custom Manufacturing Services, Inc. Louisville, Kentucky

Frame, Picture

7105–00–052–8689
Nonprofit Agency: Eastern Carolina Vocational Center Greenville, North Carolina

Stand, Office Machine

7110–00–601–9835
7110–00–601–9849
7110–01–136–1563
Nonprofit Agency: Custom Manufacturing Services, Inc. Louisville, Kentucky

Cap Assembly, Plastic Water Can

7240–00–089–7312
Nonprofit Agency: Royal Maid Association for the Blind, Inc. Hazlehurst, Mississippi

Services

Grounds Maintenance
Federal Bureau of Investigation Complex
Clarksburg, West Virginia
Nonprofit Agency: The Summit Center, Clarksburg, West Virginia

Janitorial/Custodial

Federal Bureau of Investigation Complex
Clarksburg, West Virginia
Nonprofit Agency: Marion County Opportunity Workshop, Inc. Fairmont, West Virginia

G. John Heyer,

General Counsel.

[FR Doc. 93–31503 Filed 12–23–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 28, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to the Procurement List for production by the nonprofit agency listed:

Janitorial/Custodial
Jennings Randolph Federal Center
Elkins, West Virginia
Nonprofit Agency: Buckhannon-Upshur Work Adjustment Center, Inc. Buckhannon, West Virginia

G. John Heyer,

General Counsel.

[FR Doc. 93–31504 Filed 12–23–93; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; State Student Incentive Grant Program

AGENCY: Department of Education.

ACTION: Notice of the closing date for receipt of State applications for fiscal year 1994.

SUMMARY: The Secretary of Education (Secretary) gives notice of the closing date for receipt of State applications for fiscal year 1994 funds under the State Student Incentive Grant (SSIG) Program. This program, through matching formula grants to States for student awards, provides grants to students with substantial financial need. The SSIG Program supports Goals 2000, the President's strategy for moving the Nation toward the National Education

Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education.

A State that desires to receive SSIG funds for this fiscal year must have an agreement with the Secretary as provided under section 1203(a) of the Higher Education Act of 1965, as amended (HEA). The State must submit an application through the State agency that administered its SSIG Program as of July 1, 1985, unless the Governor has subsequently designated, and the Secretary has approved, a different State agency.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Island (Palau), provided it remains a trust territory. (The future eligibility of the Republic of Palau will be determined by the provisions of the Compact of Free Association.) Authority for this program is contained in sections 415A through 415E of the HEA. (20 U.S.C. 1070c–1070c–4)

Closing Date for Transmittal of Applications

An application for fiscal year 1994 SSIG funds must be mailed or hand-delivered by April 15, 1994.

Application Form

The required application form for receiving SSIG funds will be mailed to officials of the appropriate State agency in each State at least 30 days before the closing date. Applications must be prepared and submitted in accordance with the HEA and the program regulations cited in this notice. The Secretary strongly urges that applicants only submit information that is requested.

Applications Delivered by Mail

An application sent by mail must be addressed to: Mr. Fred Sellers, Chief, Pell and State Grant Section, room 4018, ROB–3, U.S. Department of Education, Student Financial Assistance Programs, 400 Maryland Avenue, SW., Washington, DC 20202–5447.

The Secretary will accept the following proof of mailing:

(1) A legibly dated U.S. Postal Service postmark;

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

(3) A dated shipping label, invoice, or receipt from a commercial carrier; or

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) A mail receipt that is not dated by the U.S. Postal Service. The Department of Education encourages applicants to use registered or at least first-class mail.

A late applicant cannot be assured that its application will be considered for fiscal year 1994 funding.

Applications Delivered by Hand

An application that is hand-delivered must be taken to Mr. Fred Sellers, U.S. Department of Education, Student Financial Assistance Programs, 7th and D Streets, S.W., room 4018, General Service Administration Regional Office Building #3, Washington, DC. Hand-delivered applications will be accepted between 8 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information

Section 415C(a) of the HEA requires that an annual application be submitted for a State to receive SSIG funds. In preparing the application, each State agency should be guided by the table of allotments provided in the application package.

State allotments are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallotment, in addition to its basic allotment, which is contingent upon the availability of such additional funds.

In fiscal year 1993, 49 States, the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Island (Palau), and the Commonwealth of the Northern Mariana Islands received funds under the SSIG Program.

Applicable Regulations

The following regulations are applicable to the SSIG Program:

(1) The SSIG Program regulations in 34 CFR Part 692.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement), and Governmentwide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

(3) The regulations in 34 CFR part 604 that implement section 1203 of the HEA (Federal-State Relationship Agreements).

(4) The Student Assistance General Provisions in 34 CFR Part 668.

FOR FURTHER INFORMATION CONTACT: Ms. Jacquelyn C. Jones, Pell and State Grant Section, U.S. Department of Education, Student Financial Assistance Programs, Washington, DC 20202–5447; telephone (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. (20 U.S.C. 1070c–1070c–4).

(Catalog of Federal Domestic Assistance Number 84.069, State Student Incentive Grant Program)

Dated: December 17, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–31418 Filed 12–23–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board.

Date and Time: Wednesday, January 19, 1994, 8:30 a.m.–4 p.m.

Place: JW Marriott Hotel, 1331 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Jake W. Stewart, Designated Federal Officer, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Secretary of Energy Advisory Board was established to serve as the Secretary of Energy's primary mechanism for long-range planning and

analysis of major issues facing the Department of Energy. The Board will advise the Secretary on the research, development, energy and national defense responsibilities, activities, and operations of the Department and provide expert guidance in these areas to the Department.

Tentative Agenda

8:30 a.m.–9 a.m. Opening Remarks of the Chairman and Secretary of Energy
9 a.m.–11:30 a.m. Presentations to the Board
11:30 a.m.–12 p.m. Follow-on Activities from the Task Force on Radioactive Waste Management
12 p.m.-1:30 p.m. Adjourn for Lunch
1:30 p.m.–2 p.m. Public Comment Period
2 p.m.–3:15 p.m. Board Discussion Period
3:15 p.m.-4 p.m. Chairman and Secretary's closing remarks
4 p.m. Adjourn

A final agenda will be available at the meeting.

Public Participation: The Chairman of the Board is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. The Board welcome public comment. If business permits, members of the public will be heard in the order in which their requests are received. The Board will make every effort to hear the views of all interested parties. Written comments addressed to the Board may be submitted to Jake W. Stewart, Executive Director/ Designated Federal Officer, Secretary of Energy of Advisory Board, 1000 Independence Avenue, SW., Washington, DC 20585. Written comments received by Monday, January 10, 1994, will be made available to Board members prior to the meeting.

Minutes: Minutes of the meeting will be available for public review and copying approximately 30 days following the meeting at the Department of Energy Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday.

Issued at Washington, DC, on December 20, 1993.

Marcia Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–31497 Filed 12–23–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Efficiency and Renewable Energy

[Case No. F–065]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Carrier Corp.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Carrier Corporation (Carrier) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's 48HJ, 48HM, 48TJ/580D, 48SS/588A, and 48SX/589A induced draft roof-top furnaces.

Today's notice also publishes a "Petition for Waiver" from Carrier. Carrier's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Carrier seeks to test using a blower delay time of 45 seconds for its 48HJ, 48HM, 48TJ/ 580D, 48SS/588A, and 48SX/589A induced draft roof-top furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than January 26, 1994.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–065, Mail Stop EE–90, room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0561.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7140

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–9507

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/ or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On October 13, 1993, Carrier filed an Application for Interim Waiver regarding blower time delay. Carrier's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Carrier requests the allowance to test using a 45-second blower time delay

when testing its 48HJ, 48HM, 48TJ/580D, 48SS/588A, and 48SX/589A induced draft roof-top furnaces. Carrier states that the 45-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.6 percent. Since current DOE test procedures do not address this variable blower time delay, Carrier asks that the Interim Waiver be granted.

The Department has published a Notice of Proposed Rulemaking on August 23, 1993 (58 FR 44583) to amend the furnace test procedure, which addresses the above issue.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; The Ducane Company Inc., 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Carrier an Interim Waiver for its 48HJ, 48HM, 48TJ/580D, 48SS/588A, and 48SX/589A induced draft roof-top furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Carrier was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the petition.

Issued in Washington, DC, December 17, 1993.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

December 17, 1993.

Mr. Edward A. Baily,

Vice President, Government & Industry Relations, Carrier Corporation, P.O. Box 4808, Syracuse, New York 13221.

Dear Mr. Baily: This is in response to your October 13, 1993, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for Carrier Corporation (Carrier) 48HJ, 48HM, 48TJ/580D, 48SS/588A, and 48SX/589A induced draft roof-top furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; THE Ducane Company Inc., 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Carrier's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Carrier will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Carrier's Application for an Interim Waiver from the DOE test procedure for its 48HJ, 48HM, 48TJ/580D, 48SS/588A, and 48SX/589A induced draft roof-top furnaces regarding blower time delay is granted.

Carrier shall be permitted to test its 48HJ, 48HM, 48TJ/580D, 48SS/588A, and 48SX/589A induced draft roof-top furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph: 3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows: 3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified

at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

October 13, 1993.

The Assistant Secretary for Conservation and Renewable Energy,

United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Gentlemen: Subject: *Petition for Waiver. and Application for Interim Waiver.*

This is a petition for Waiver and Application for Interim Waiver which are submitted pursuant to title 10 CFR 430.27 as amended November 14, 1986. Waiver is requested from Test Procedures for Measuring Energy Consumption of Furnaces found in appendix N to subpart B of part 430.

Under the existing Test Procedure, a 1.5 minute time delay between burner and blower startup is required. Carrier requests a waiver from the specified 1.5 minute delay. In its place, we request the use of a 45-second delay on Carrier's line of 48HJ, 48HM, 48TJ/580D, 43SS/588A and 48SX/589A induced draft roof-top furnaces.

The time delay in all lines of equipment is fixed within the furnace control, and cannot be adjusted by the installer or servicer.

The current test procedures do not credit Carrier for energy savings associated with the shorter blower time delays. Test data on our mid-efficiency furnaces show a decrease in the heat-up cycle energy losses when using the 45-second delay, resulting in an increased in AFUE of approximately 0.6 AFUE points. Confidential supporting test data is available upon request.

Carrier is confident that a waiver will be granted for public policy reasons in the light of previous rulings in which DOE granted waivers of this type to Carrier, Lennox Industries, Inter-City Products, Amana, Rheem Manufacturing, and Trane Company.

Respectfully,

Edward A. Baily,

Vice President, Government & Industry Relations.

[FR Doc. 93-31498 Filed 12-23-93; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket Nos. ER90-525-010, et al.]

New England Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. New England Power Company

[Docket Nos. ER90-525-010 and ER91-565-004]

December 16, 1993

Take notice that on December 13, 1993, New England Power Company (NEP) filed a refund compliance report associated with certain refund obligations under Docket Nos. ER90-525-000 et al. and ER91-565-000 et al. In accordance with the settlements approved in those dockets, NEP has reconciled to actual certain purchased power expenses, making refunds and adjusting its fuel adjustment clause. NEP stated that refunds, including interest, were made on November 30, 1993. NEP has also adjusted the level of its fuel adjustment clause for the month of November, 1993.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Michigan Power Limited Partnership

[Docket No. QF88-441-001]

December 16, 1993

On December 8, 1993, Michigan Power Limited Partnership (Applicant), in care of Sheldon L. Abramson, Esq., Destec Energy, Inc., 2500 City West Boulevard, Houston, Texas 77042 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. On June 17, 1988, in Docket No. QF88-441-000, The Dow Chemical Company (Dow) filed a notice of self certification pursuant to § 292.207(a) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the Applicant, the topping-cycle cogeneration facility which will be located adjacent to the Dow industrial chemical complex in Ludington, Michigan, will consist of a gas turbine generator, a separately fired heat recovery boiler and an extraction/condensing steam turbine generator. Steam from the facility will be used for the production of various chemical products at the Dow industrial chemical complex. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 123 MW. The installation of the facility is expected to commence in the first quarter of 1995.

Comment date: January 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Company Services, Inc.

[Docket Nos. ER93-59-002, ER93-65-002, and EL91-29-003]

December 15, 1993

Take notice that on December 10, 1993, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company made a supplemental filing in this proceeding.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. West Texas Utilities Company

[Docket No. ER94-229-000]

December 16, 1993

Take notice that on December 9, 1993, West Texas Utilities Company (WTU) tendered for filing a Notice of Termination, which states that the Power Supply Agreement between WTU and McCulloch Electric Cooperative, Inc. (McCulloch) filed with the Commission and designated as Service Agreement No. 8 was cancelled effective June 11, 1992.

Copies of the filing have been sent to McCulloch and the Public Utility Commission of Texas.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Company

[Docket No. ER94-221-000]

December 16, 1993

Take notice that on December 6, 1993, Boston Edison Company (Edison) tendered for filing an agreement with the Massachusetts Bay Transportation Authority (MBTA) for the construction of a 115 Kv interconnection of Edison's K Street Substation. Edison requests that this agreement be allowed to become effective as of May 8, 1986. As good cause for a waiver of the 60 day notice requirements of section 205 to permit retroactive effective dates, Edison states that this agreement is being filed pursuant to the amnesty granted by the Commission in Docket No. PL93-2-002.

Edison states that it has served the filing on the MBTA and the Massachusetts Department of Public Utilities.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. West Texas Utilities Company

[Docket No. ER94-228-000]

December 16, 1993

Take notice that on December 9, 1993, West Texas Utilities Company (WTU)

tendered for filing an Assignment of Service Agreement between WTU and Gate City Electric Cooperative, Inc. (Gate City) and Brazos Electric Power Cooperative, Inc. (Brazos). WTU also tendered for filing an Assignment of Service Agreement between WTU and Dickens Electric Cooperative, Inc. and Brazos. Pursuant to the Agreements, Gate City and Dickens have agreed to assign to Brazos existing Service Agreements pursuant to which Gate City and Dickens took full-requirements service from WTU. WTU seeks an effective date of April 1, 1986.

Copies of the filing have been served on Gate City, Dickens, Brazos, and the Public Utilities Commission of Texas.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Philadelphia Electric Company

[Docket No. ER94–231–000]

December 16, 1993

Take notice that Philadelphia Electric Company (PE) tendered for filing on December 10, 1993, as initial rate schedules borderline interchange agreements with Metropolitan Edison Company (Met-Ed) and Pennsylvania Power & Light Company (PP&L). PE states that the borderline sales are based on state commission approved retail rates.

PE states that copies of the filing were served on Met-Ed, and PP&L and the Pennsylvania Public Utility Commission.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of Oklahoma

[Docket No. ER94–233–000]

December 16, 1993

Take notice that on December 10, 1993, Public Service Company of Oklahoma (PSO) filed a request for waiver of the Commission's fuel clause regulations. While awaiting judicial resolution of an extended dispute with a coal transporter, PSO seeks to pass through the fuel clause the contract amounts in dispute until such time as a judicial order is received or a settlement reached.

PSO seeks an effective date of January 1, 1994 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing have been served on affected customers and the Oklahoma Corporation Commission. Additional copies are available for inspection in PSO's main offices in Tulsa, Oklahoma.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Tenaska Washington Partners, L.P.

[Docket No. ER94–230–000]

December 16, 1993

Take notice that Tenaska Washington Partners, L.P. (Tenaska) on December 10, 1993, tendered for filing an initial FERC electric service tariff, which is a Power Purchase and Operating Agreement between itself and Bonneville Power Administration.

The Agreement provides for sales of energy and capacity from Commonwealth to Bonneville.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Company

[Docket No. ER94–232–000]

December 16, 1993

Take notice that on December 9, 1993, Arizona Public Service Company (APS) requested the Commission to disclaim jurisdiction over the Operation and Maintenance Agreement (Agreement) between APS and Town of Wickenburg (Wickenburg) or, if the Commission asserts jurisdiction, to accept the Agreement for filing.

The Agreement provides that APS will operate and maintain the electrical distribution system which is owned by Wickenburg and is within the town limits of Wickenburg.

Copies of this filing have been served upon Wickenburg and the Arizona Corporation Commission.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. New York State Electric & Gas Corporation

[Docket No. ER94–191–000]

December 16, 1993

Take notice that on November 29, 1993, New York State Electric & Gas Corporation (NYSEG) tendered for filing a letter agreement between NYSEG and Consolidated Edison Company of New York, Inc. NYSEG states that this Agreement amends NYSEG'S current agreement for the borderline sale of electric energy between NYSEG and Con Edison.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket Nos. ER86–271–005 and ER87–365–004]

December 16, 1993

Take notice that on November 29, 1993, Southern California Edison Company tendered for filing copies of corrected tariff sheets to the filing made in the above-referenced dockets on November 8, 1993.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Electric Power Company

[Docket No. ER94–226–000]

December 16, 1993

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on December 9, 1993, tendered for filing Exhibits B to FERC Rate Schedule Nos. 65 and 66 between itself and The Wisconsin Public Power Inc. System (WPPI). The revisions change the nominal delivery voltage from 26,400 volts to 24,900 volts at WPPI's two delivery points in the Village of Slinger, Wisconsin (Slinger). According to Wisconsin Electric there is no effect on rates or revenues.

Wisconsin Electric respectfully requests an effective date of December 6, 1993, coincident with the voltage changeover at the Village of Slinger. Wisconsin Electric is authorized to state that WPPI joins in the requested effective date.

Copies of the filing have been served on WPPI, Slinger, and the Public Service Commission of Wisconsin.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Company

[Docket No. ER94–225–000]

December 16, 1993

Take notice that New England Power Company (NEP), on December 9, 1993, tendered for filing a letter agreement with Pepperell Power Associates. The letter agreement governs the parties' relationship concerning a Private Letter Ruling that NEP intends to seek from the Internal Revenue Service on the taxable nature of the contribution-in-aid-of-construction for the interconnection between Pepperell's exempt wholesale generating facility and NEP's transmission system. In its filing, NEP requested that the Federal Energy Regulatory Commission waive its filing regulations for agreements of this type when they involve only a strict passthrough of third-party expenses.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER91–569–005]

December 16, 1993

Take notice that on December 7, 1993, Entergy Services, Inc. filed a refund report, including a revised tariff page and revised rate calculations. Entergy Services filing was made to comply with the condition in the Commission's order of April 5, 1993, in this proceeding that the return on common equity component specified in the Energy open-access transmission tariff formula rate would be subject to refund and subject to the outcome of the consolidated proceeding in Docket Nos. ER92–341–000, EL92–35–000, and EL92–36–000.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. San Diego Gas & Electric Company

[Docket No. ER94–224–000]

December 16, 1993

Take notice that on December 8, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and the Sacramento Area Office of the Western Area Power Administration (Western).

SDG&E requests that the Commission allow the Agreement to become effective on January 31, 1994, or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Western.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

17. PSI Energy, Inc.

[Docket No. ER94–223–000]

December 16, 1993.

Take notice that PSI Energy, Inc. (PSI) on December 8, 1993, tendered for filing an Eighth Supplemental Agreement to the Power Coordination Agreement, dated August 27, 1982, between PSI and Wabash Valley Association, Inc. (WVPA).

The Power Coordination Agreement has been revised as a result of adding the Exhibit "A's" and single line schematics for all Interconnection Points between WVPA and PSI.

PSI and WVPA have requested an effective date of February 3, 1994.

Copies of the filing were served on Wabash Valley Power Association and the Indiana Utility Regulatory Commission.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

18. Portland General Electric Company

[Docket No. ER94–214–000]

December 16, 1993.

Take notice that on December 6, 1993, Portland General Electric Company (PGE) tendered for filing amendments to the General Transfer Agreement Between the Bonneville Power Administration (BPA) and PGE. These amendments will permit BPA and PGE to approximately share costs of construction on their interconnected systems in the Canby area.

PGE requests waiver of the notice requirements to allow the amendments to take effect December 8, 1993, or as soon as amendments are accepted for filing. PGE also requests waiver of the requirements of 18 CFR 35.13 that it file cost support data other than as provided in the filing.

Copies of this agreement have been served on BPA.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

19. San Diego Gas & Electric Company

[Docket No. ER94–124–000]

December 16, 1993.

Take notice that on December 9, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing an amendment to its earlier filing of a Power Sales Agreement between SDG&E and the City of Vernon (Vernon), executed on October 27, 1993. In the amended filing (1) SDG&E agrees to make a pro rata reduction in the demand charge when it is unable to deliver the power at the delivery point during any period of the month; (2) Vernon shall not be obligated to take and pay for the minimum energy schedules referenced in 4.1 and 4.2 of the Agreement when SDG&E is unable to deliver or when Vernon is unable to receive the full amount of associated energy scheduled during any hour due to Uncontrollable Forces; and (3) All transactions under the Agreement are predicated on SDG&E supplying power from its system. The energy charge equals 100% of SDG&E's system incremental energy cost (SIC) plus up to 10% SIC (where such 10% is limited to 1 mill/kWh when the SIC in the hour reflects a purchase power resource).

Copies of this filing were served upon the Public Utilities Commission of the State of California, the City of Vernon and the official service list.

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

20. Public Service Electric and Gas Company

[Docket No. ER94–220–000]

December 16, 1993.

Take notice that on December 7, 1993, Public Service Electric and Gas Company, Philadelphia Electric Company, Pennsylvania Power & Light Company, Baltimore Gas and Electric Company, Jersey Central Power & Light Company (JC), Metropolitan Edison Company (ME), Pennsylvania Electric Company, Delmarva Power & Light Company, and UGI Utilities Inc. (UGI) (the Filing Parties) tendered for filing as initial rate schedules seven agreements executed between 1965 to 1990 and not previously considered by the Filing Parties to be jurisdictional. Waiver of notice is requested for good cause pursuant to the Commission's Final Order issued July 30, 1993 in Docket No. PL93–2–000, 64 FERC ¶ 61,139, clarified on rehearing, 65 FERC ¶ 61,081.

The Filing Parties request that the "Agreement On Coordinated Program For Energy Use" dated April 1, 1977 be accepted for filing. The Filing Parties request that the Commission disclaim jurisdiction over the other agreements submitted, consisting of: "Mid-Atlantic Area Coordination Agreement" dated May 25, 1979; "Owners Agreement, Pennsylvania-New Jersey-Maryland Interconnection" dated September 26, 1990; "Facilities Agreement For Pennsylvania-New Jersey-Maryland Interconnection Office" dated June 16, 1993; "Keystone Operating Agreement" dated December 1, 1965, as amended' "Conemaugh Operating Agreement" dated December 1, 1967, as amended. These other agreements, according to the Filing Parties, are not required to be filed under section 205 of the Federal Power Act.

Waiver Of Notice is requested to allow an effective date for each of these agreements as of the date of execution, if the Commission does not disclaim jurisdiction. The Filing Parties do not include: UGI with respect to the "Owners Agreement," "Facilities Agreement" and "Articles of Association"; ME, Pepco and UGI with respect to the "Keystone Agreement"; or JC with respect to the "Conemaugh Agreement."

Comment date: December 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

21. Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc.

[Docket No. ER94–218–000]

December 16, 1993.

Take notice that on December 7, 1993, Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc., (Montana-Dakota) tendered for filing an Interconnection and Common Use Agreement entered into between Montana-Dakota and Basin Electric Power Cooperative, Inc. (Basin). Tendered for filing with such underlying agreement are several supplemental and associated agreements between such parties related to such underlying agreement.

Montana-Dakota requests that the Commission waive the notice requirement and (a) permit the underlying agreement to become effective on January 31, 1972 and (b) permit the associated amendments and supplements to become effective as of the rates provided for in such contractual documents.

Copies of the filing were served on Basin and on the interested utility regulatory agencies.

Comment date: December 30, 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, N.E., 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 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. 93–31444 Filed 12–23–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–126–000, et al.]

Florida Gas Transmission Co.; et al.; Natural Gas Certificate Filings

December 15, 1993.

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP94–126–000]

Take notice that on December 10, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–126,000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade an existing meter station for Peoples Gas System, Inc. (Peoples) under FGT's blanket certificate issued in Docket No. CP82–553–000 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.

FGT states that it proposes to upgrade the Orlando Southwest Meter Station in Orange County, Florida to allow for delivery of incremental volumes of natural gas. FGT also states that the Orlando Southwest delivery point would add an additional 4-inch meter and other appurtenant facilities necessary to accommodate the measurement of gas, up to 396 Mcf per hour at 150 psig. FGT says that Peoples would reimburse it for all costs directly and indirectly incurred by FGT for the construction of the meter station. It is estimated that the total cost of construction would be $80,600, inclusive of tax gross-up.

FGT states that the proposed construction was requested by Peoples to accommodate the geographic shift of its market requirements. FGT also states it would not increase total gas deliveries to Peoples nor would it increase the current authorized level of service. FGT further states that its peak day and annual deliveries would not be impacted.

Comment date: January 31, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Questar Pipeline Company

[Docket No. CP94–123–000]

Take notice that on December 7, 1993, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP94–123–000 an application pursuant to section 7(b) of the Natural Gas Act requesting authority to abandon natural-gas transportation service provided to Northern Natural Gas Company (Northern) under Questar's Rate Schedule X–31 to Original Volume No. 3 of its FERC Gas Tariff. By mutual agreement between Questar and Northern, the authorized services proposed to be abandoned by Questar will be converted to Rate Schedule T–1 transportation service under First Revised Volume No. 1 of Questar's FERC Gas Tariff, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Questar requests expedited consideration of its request so that authority to abandon the Rate Schedule X–31 transportation service to Northern may be granted as quickly as possible to enable Northern to take advantage of the opportunities available to 18 CFR part 284 shippers. Questar represents that by letter dated June 10, 1993, Northern, as a party to Questar's restructuring proceeding in Docket No. RS92–9–000, requested that its Rate Schedule X–31 transportation service be converted to Rate Schedule T–1 transportation service. Questar states that it does not propose to abandon any existing facilities in conjunction with this filing.

Questar requests Commission waiver of the provisions reflected in §§ 3 and 5 of the General Terms and Conditions of First Revised Volume No. 1 of its FERC Gas Tariff, so that the priority applicable to the quantity of gas transported for Northern under Rate Schedule X–31 may be transferred to the equivalent transportation service that will be provided under it's blanket certificate and according to 18 CFR 284.222.

Comment date: January 5, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. ANR Pipeline Company

[Docket No. CP94–78–000]

Take notice that on November 12, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an application, as supplemented on December 14, 1993, pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's regulations for a certificate of public convenience and necessity to (1) cover all facilities previously functionalized as gathering and not previously certificated and (2) refunctionalize from gathering to transmission all facilities (including facilities already certificated) previously functionalized as gathering for rate purposes, all as more fully set forth in the application, as supplemented, which is on file with the Commission and open to public inspection.[1]

ANR states that it constructed facilities originally functionalized as gathering to connect its system to

[1] ANR provided maps supporting its claim that the facilities at issue were properly transmission facilities. However, ANR indicated that, because of the voluminous nature of the maps, it filed only one copy of the maps with the Commission and that it would make another copy of the maps available at its Detroit, Michigan offices for parties to review.

supply sources and to allow it to gather new sources of supply to fulfill its certificated sales obligation to its customers. ANR indicates that it provided primarily a bundled sales service which required ANR to procure and gather, and then transport natural gas supplies to meet the needs of its customers at the city gate. It is further stated that Order No. 636 has forbidden ANR from continuing to provide this bundled service, and to comply with Order No. 636, ANR will cease to purchase and gather natural gas supplies from procedures to support a city-gate sales function.

ANR states that all gas on its system would be owned by third parties, and ANR would be engaged strictly in a transportation function. It is indicated that all gas entering ANR's system can be forward-hauled, backhauled, displaced, or exchanged for eventual consumption anywhere in the contiguous 48 states. It is also indicated that shippers on ANR's system would be afforded access to all receipt points and would have the flexibility to access all supply sources interconnected with its system. ANR states that its system would now be dedicated to the function of transporting gas on behalf of others, thus representing a fundamental change in the nature of the usage of ANR's system which ANR should be allowed in the functionalization of its facilities. ANR asserts that reflecting this change on a system-wide basis is consistent with the primary function test established by the Commission to make determinations between gathering and transmission facilities.

ANR states that all of its facilities currently functionalized as gathering are located in its Southeast Area comprising of facilities located in Louisiana, Texas, Mississippi and the Gulf of Mexico, and its Southwest Area consisting of facilities located in Kansas, Oklahoma, Texas and Wyoming. It is indicated that the majority of ANR's gathering facilities have been certificated by the Commission in previous applications. ANR requests permission to certificate all of the gathering facilities not previously certificated.[2] ANR indicates that the gross and net costs of the facilities requested to be refunctionalized are $445,822,458, and $47,784,165, respectively. ANR has submitted maps of the facilities, along with a discussion of why the facilities should be functionalized as transmission consistent with the criteria set forth in Farmland Industries, Inc., 23 FERC ¶ 61,083 (1983).

ANR requests an effective date of December 1, 1993, to correspond with the requested effective date of a companion rate case filed in Docket No. RP94–43–000.

Comment date: January 5, 1994, in accordance with Standard Paragraph F at the end of this notice.

[2] ANR also requests abandonment authorization for any certificated facilities determined to be gathering. ANR states that it only seeks to abandon the facilities, not any service provided through those facilities.

4. East Tennessee Natural Gas Company

[Docket No. CP94–125–000]

Take notice that on December 10, 1993, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–125–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point for an existing transportation customer, United Cities Gas Company (United Cities), under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes to install delivery point facilities for service to United Cities in Jefferson County, Tennessee. It is stated that East Tennessee would use the facilities to deliver up to 7,200 Dt equivalent of gas transported on a firm basis under East Tennessee's Rate Schedule FT for United Cities' account. It is explained that the purpose of the delivery point is to allow United Cities to expand its distribution service in the town of Marshtown, Tennessee. It is asserted that the construction cost would be paid by United States.

It is stated that the deliveries would be within United Cities' currently authorized entitlement from east Tennessee. It is further stated that East Tennessee has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

Comment date: January 5, 1993, in accordance with Standard Paragraph F at the end of this notice.

5. Columbia Gas Transmission Corporation

[Docket No. CP94–124–000]

Take notice that on December 8, 1993, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, filed in Docket No. CP94–124–000, a request pursuant to §§ 157.205 and 157.211 of Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new point of delivery for firm transportation service to an existing customer under the blanket certificate issued in Docket No. CP83–76–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia states that it requests authorization to construct and operate the facilities necessary to provide a new point of delivery for firm transportation service to Waterville Gas & Oil Company (WGO) in Wood County, Ohio, as follows:

Customer	Estimated		
	Design day delivery, (Dth)	Annual delivery,(Dth)	Construction cost
WGO	250	40,000	$28,000

The new point of delivery has been requested by Columbia's existing customer to serve a new subdivision market. The quantities to be provided through the new delivery point are within Columbia's currently authorized level of service under Columbia's GTS Rate Schedule. The new point of delivery will be added to the existing service agreement and WGO's current daily entitlement of 3,100 Dth/Day will not be affected. WGO has agreed to reimburse Columbia for the actual cost of the interconnection, plus any gross-up required for tax purposes.

Comment date: January 31, 1994, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipeline Company

[Docket No. CP94–129–000]

Take notice that on December 13, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–129–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon transportation services it provides for 10 shippers of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that these transportation services have been inactive for several years. Tennessee further states that the implementation of restructured services under Order No. 636, effective September 1, 1993, has rendered the transportation services

unnecessary and obsolete. Tennessee requests that the abandonment of the transportation services be made effective September 1, 1993. Tennessee asserts that the granting of the proposed abandonments will allow it to provide these customers with more responsive arrangements with greater flexibility under its blanket transportation authorization.

Tennessee further states that it does not propose to abandon any facilities herein.

Comment date: January 5, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or 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 applicant to appear or be represented at the hearing.

G. 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. 93–31442 Filed 12–23–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–130–000 et al.]

Northern Natural Gas Company, et al.; Natural Gas Certificate Filings

December 16, 1993.

Take notice that the following filings have been made with the Commission:

1. Northern Natural Gas Company

[Docket No. CP94–130–000]

Take notice that on December 13, 1993, Northern Natural Gas Company (Northern) 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP94–130–000, pursuant to section 7(b) of the Natural Gas Act and part 157 of the Commission's Regulations an application requesting approval to abandon Northern's Montana facilities by sale to NGC Energy Resources, Limited Partnership (NER). Northern also requests termination of its existing Presidential Permit to operate facilities on the international border, all as more fully set forth in the application that is on file with the Commission and open to public inspection.

It is stated that Northern's Montana facilities consist of approximately 500 miles of pipeline and three compressor stations located in Blaine, Chouteau and Hill Counties in Montana. These facilities are noncontiguous to Northern's pipeline system and the abandonment by sale will not affect flows on Northern's remaining system.

It is further stated that the Montana facilities were installed by Northern in the early 1970's pursuant to certificate issued by the Commission at Docket Nos. CP70–69, CP70–70 and CP70–71 on May 11, 1972 and Docket No. CP73–166 on July 20, 1973.

On October 14, 1993, Northern and NER entered into the agreement providing for the sale and transfer of the Montana facilities from Northern to NER.

Comment date: January 6, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Williston Basin Interstate Pipeline Company

[Docket No. CP94–131–000]

Take notice that on December 14, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP94–131–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a tie-in valve in the Baker Storage Field located in Fallon County, Montana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Williston Basin proposes to abandon the valve which connects Wells 93 and 96 in the Baker Storage Field, because Well 96 is no longer an active storage well and has been converted to an observation well. It is asserted that Well 93 would remain connected to Williston Basin's storage gathering system by underground facilities. It is stated that Williston Basin was authorized to operate the storage facilities in Docket Nos. CP82–487–000 et al. It is asserted that the proposed abandonment would have no impact on Williston Basin's current operations or customer services.

Comment date: January 6, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to

the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or 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 applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–31443 Filed 12–23–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–80–000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

December 16, 1993.

Take notice that on December 13, 1993, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective on January 1, 1994:

First Revised Sheet Nos. 1–2
Original Sheet No. 4–A
Fourth Revised Sheet No. 5
Third Revised Sheet No. 6
Original Sheet Nos. 131–A—131–CC
First Revised Sheet No. 133
Original Sheet Nos. 133–A—133–B
First Revised Sheet Nos. 205–206
First Revised Sheet Nos. 207–210–B
Original Sheet Nos. 210–C—210–D
First Revised Sheet Nos. 236–237
First Revised Sheet No. 253
Original Sheet No. 254
First Revised Sheet No. 255
Original Sheet No. 256
Original Sheet No. 257–A
Original Sheet Nos. 301–315

National states that the proposed tariff sheets reflect three separate services to be performed by the newly created market-area Hub. The Parking (P–1), Wheeling (W–1) and Imbalance Resolution (IR–1) services will allow National to perform its Hub facilities in the vicinity of Ellisburg and Leidy, Pennsylvania as a marketing center which will improve the efficiency of gas transportation into the northeast market. The Hub includes interconnections with five interstate pipelines: Transcontinental Gas Pipe Line corporation, Tennessee Gas Pipeline Company, CNG Transmission Corporation, Texas Eastern Gas Transmission Corporation and Columbia Gas Transmission Corporation.

National also states that its filing provides for the flow back of ninety (90) percent of its annual net revenues derived from the Hub services pursuant to Section 24 of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1. In addition, the proposed rates for the Hub Services are cost derived rates since National does not have any throughput experience. The proposed rates also reflect the inferior status of the services and the limited geographic area (distance of haul) encompassed.

National further states that copies of this filing were served upon National's jurisdictional customers and the Regulatory Commission's of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

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 Rule 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest should be filed on or before December 23, 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. 93–31413 Filed 12–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–45–001]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

December 16, 1993.

Take notice that on December 10, 1993, National Fuel Gas Supply Corporation (National) tendered for filing in compliance with Ordering Paragraph (D) of the "Order Accepting Tariff Sheets, Subject to Conditions, and Granting and Denying Waivers", issued November 26, 1993, hereby submits First Revised Sheet No. 227.

National states that the Commission directed National to file this revision to its tariff to reflect the Commission's policy that refunds of amounts, associated with activity prior to August 1, 1993, and recorded in Account Nos. 186 and 191, must be flowed through to National's customers regardless of when the refunds are received.

National further states that copies of this filing were served upon National's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before December 23, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–31414 Filed 12–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES94–12–0000]

Texas-New Mexico Power Co.; Application

December 17, 1993.

Take notice that on December 15, 1993, Texas-New Mexico Power Company filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than $147.75 million of short-term debt under an existing amended loan and credit agreement with a final maturity date no later than December 31, 1998.

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 January 14, 1994. Protests will be considered by the Commission 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 must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-31445 Filed 12-23-93; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50759B; FRL-4748-1]

Issuance of an Experimental Use Permit for a Transgenic Plant Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On July 6, 1993, EPA issued an Experimental Use Permit (EUP) to Ciba-Geigy Corporation, Seed Division (Ciba Seeds) to conduct field testing of a pesticidal substance that is produced in a plant. EPA has determined that this permit may be of regional and national significance since it is the third EUP approved under the Federal Insecticide, Fungicide, and Rodenticide Act, for testing with a pesticidal substance that is produced in a plant. The Agency evaluated the data submitted by Ciba Seeds and, based on these data and other available data, could foresee no significant risk to humans or to nontarget organisms from the group of field tests proposed by Ciba Seeds through March 1994. The Agency's assessment, however, was based solely on the EUP; eventual commercialization of Ciba Seeds transgenic corn pesticide may raise issues not addressed with this EUP. In accordance with 40 CFR 172.11(c), the Agency is notifying the public regarding issuance of this permit.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP-50759B and be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Room 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Details of EPA's assessment are contained in the Office of Pesticide Program's (OPP's) Scientific Position and Decision Documents. These documents, along with Ciba Seeds' application, are available for public inspection in Rm. 1128, at the address given above in OPP's public docket.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703)305-7690

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 31, 1993 (58 FR 16827), EPA issued a notice which announced that EPA had received an application for an EUP from Ciba-Geigy Corporation, Seed Division (Ciba Seeds), P.O. Box 12257, Research Triangle Park, North Carolina 27709-2257. Further, in the **Federal Register** of May 7, 1993 (58 FR 27284), EPA extended the comment period in order to give all interested parties adequate time to submit comments. On July 6, 1993, EPA approved the EUP for plantings through March 31, 1994, and allowed for the completion of all associated activities such as, collection of field data, and harvesting and processing of seed after the last planting. Plantings beginning on or after April 1994, were not approved at this time since further information on the experimental program was needed for the Agency to conduct a complete assessment.

Ciba Seeds is testing a truncated version of the cryIA (b)-δendotoxin (derived from the soil microbe Bacillus thuringiensis) as expressed in maize plants originating from crosses of descendants of two separate transformation events (Event 171 and Event 176) of the proprietary inbred line CG00526.

Plantings under this EUP are through March 1994, and taking place in six states (Florida, Hawaii, Illinois, Iowa, Nebraska, and North Carolina), with cumulative acreage of transgenic plants at a maximum of 33 acres. Activities approved for the plantings through March 1994, are as follows: Gene efficacy evaluations, resistance management experiments, insect susceptibility studies, breeding and seed increases. The maximum total amount of cryIA(b) protein in seeds planted for this period is 35.7 grams and the maximum total amount of cryIA(b) protein produced in all the corn grown will be 38 kilograms. Any reserved transgenic plant material will be used only for research or future plantings. All other material will be destroyed. Following each field test, all plant material not required for future research or plantings is being incorporated into the soil to decompose.

On April 27, 1993, National Wildlife Federation (NWF) requested that the Agency extend the comment period for an additional 45 days. An additional 2-week comment period was provided (May 7, 1993, 58 FR 27284), to allow sufficient time for comment. The comment period ended May 21, 1993. NWF also requested that the Agency should either make relevant documents available without a Freedom of Information Act (FOIA) request or extend the comment period to reflect the Agency's ability to process FOIA requests. The Agency agrees that it should provide a sufficient amount of time for public comment for EUP applications. A 30-day comment period is provided for EUP applications. FOIA requests are normally not required for these applications. If a FOIA request were required, the Agency would take this in consideration when determining the length of the comment period.

During the extension of the comment period, the Agency received a second comment from the NWF on May 20, 1993. NWF expressed concern about the potential human health and environmental impacts of widespread use of the truncated Bt endotoxin produced in corn as well as the potential for resistance developing to Bt toxin. NWF recommended that EPA should analyze the likely benefits to using Bt-corn ". . .before it relies on them in its decision." They specified concerns stemming from ingestion of the Bt toxin by humans, domestic animals, and wildlife. NWF recommended that EPA not approve the Ciba Seeds application or any other large-scale tests of Bt-crops, except for resistance management research, ". . .until the federal government develops an enforceable regulatory program to significantly delay resistance."

The Agency agrees that human health and nontarget affects should be addressed for large-scale testing and

commercialization. Because of crop destruction, containment measures, and limited acreage proposed for the first year of this EUP application, the Agency has determined that there will not be significant exposure to humans and/or nontarget organisms. EPA is concerned about the development of resistance to the Bt delta-endotoxin. The potential for resistance can develop to any pesticide after prolonged, wide-spread use. The Agency is, therefore, currently in the process of evaluating regulatory and non-regulatory options for addressing pesticide resistance for all pesticides. In addition, Ciba Seeds requested that the Agency review its proposed resistance management plan. The Office of Pesticide Program's Pesticide Resistance Workgroup has reviewed the proposed EUP as well as a resistance management plan submitted by Ciba Seeds with the application. The Pesticide Resistance Workgroup concluded that resistance to the cryIA (b) δ-endotoxin would be unlikely during the first year of the EUP due to the limited acreage involved.

In addition to the comments from NWF, EPA received several other comments on this EUP. These comments were supportive of this EUP application because of the potential for this product in protecting corn from the European Corn Borer. These comments cited significant loses to crops from the European Corn Borer and the large amount of insecticides currently used. They also noted that Ciba Seeds was including resistance management field tests as part of the EUP. For these reasons, the commenters urged the Agency to review the application in a timely manner. The Agency appreciates the points raised in these comments. The Agency is committed to an appropriate review of EUP applications without unnecessarily impeding the development of new products.

The remainder of the comments received were from growers, State and local governments, trade associations, and universities.

The Agency has evaluated the potential for exposure to humans and nontarget organisms from this EUP and concluded that for field tests proposed for the period ending on or before March 31, 1994, exposure to the CryIA (b) gene product is not sufficient to cause concern. The potential for the CryIA (b) and marker genes to be transferred by pollination to other plants outside the field site or for the transgenic plants to survive and spread beyond the field site is minimal. There are no human dietary concerns because all the crops in field test sites will either be destroyed or used for experimental purposes or future plantings. No conclusions could be made for the tests proposed to begin on or after April 1994, because there was insufficient information in the submission regarding the experimental program for this time period.

Therefore, only plantings through March 1994, and associated activities such as collection of field data and the harvesting and processing of seed were approved.

Dated: December 14, 1993.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-31469 Filed 12-23-93; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-51826; FRL-4751-2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 100 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 93-1331, 93-1332, 93-1333, 93-1334, 93-1335, 93-1336, October 19, 1993.

P 93-1337, 93-1338, 93-1339, 93-1340, 93-1341, 93-1342, 93-1343, 93-1344, 93-1345, 93-1346, 93-1347, 93-1348, 93-1349, 93-1350, 93-1351, 93-1352, 93-1353, October 20, 1993.

P 93-1354, October 22, 1993.

P 93-1355, 93-1356, 93-1357, 93-1359, 93-1360, 93-1361, 93-1362, 93-1363, October 23, 1993.

P 93-1364, 93-1365, 93-1366, 93-1367, 93-1368, 93-1369, 93-1370, 93-1371, 93-1372, 93-1373, 93-1374, October 24, 1993.

P 93-1375, 93-1376, 93-1377, 93-1378, 93-1379, October 25, 1993.

P 93-1380, 93-1381, 93-1382, October 26, 1993.

P 93-1383, 93-1384, October 25, 1993.

P 93-1385, November 6, 1993.

P 93-1386, 93-1387, 93-1388, 93-1389, 93-1390, October 25, 1993.

P 93-1391, 93-1392, 93-1393, 93-1394, October 26, 1993.

P 93-1395, October 31, 1993.

P 93-1396, October 27, 1993.

P 93-1397, October 26, 1993.

P 93-1398, 93-1399, 93-1400, 93-1401, 93-1402, 93-1403, 93-1404, 93-1405, 93-1406, 93-1407, 93-1408, 93-1409, 93-1410, 93-1411, October 30, 1993.

P 93-1412, 93-1413, October 31, 1993.

P 93-1414, November 8, 1993.

P 93-1415, 93-1416, 93-1417, November 1, 1993.

P 93-1418, 93-1419, October 31, 1993.

P 93-1420, 93-1421, November 2, 1993.

P 93-1422, November 3, 1993.

P 93-1423, 93-1424, 93-1425, 93-1426, 93-1427, 93-1428, 93-1429, 93-1430, November 2, 1993.

Written comments by:

P 93-1331, 93-1332, 93-1333, 93-1334, 93-1335, 93-1336, September 19, 1993.

P 93-1337, 93-1338, 93-1339, 93-1340, 93-1341, 93-1342, 93-1343, 93-1344, 93-1345, 93-1346, 93-1347, 93-1348, 93-1349, 93-1350, 93-1351, 93-1352, 93-1353, September 20, 1993.

P 93-1354, September 22, 1993.

P 93-1355, 93-1356, 93-1357, 93-1359, 93-1360, 93-1361, 93-1362, 93-1363, September 23, 1993.

P 93-1364, 93-1365, 93-1366, 93-1367, 93-1368, 93-1369, 93-1370, 93-1371, 93-1372, 93-1373, 93-1374, September 24, 1993.

P 93-1375, 93-1376, 93-1377, 93-1378, 93-1379, September 25, 1993.

P 93-1380, 93-1381, 93-1382, September 26, 1993.

P 93-1383, 93-1384, September 25, 1993.

P 93-1385, October 7, 1993.

P 93-1386, 93-1387, 93-1388, 93-1389, 93-1390, September 25, 1993

P 93-1391, 93-1392, 93-1393, 93-1394, September 26, 1993.

P 93-1395, October 1, 1993.

P 93-1396, September 27, 1993.

P 93-1397, September 26, 1993.

P 93-1398, 93-1399, 93-1400, 93-1401, 93-1402, 93-1403, 93-1404, 93-1405, 93-1406, 93-1407, 93-1408, 93-1409, 93-1410, 93-1411, September 30, 1993.

P 93-1412, 93-1413, October 1, 1993.

P 93-1414, October 9, 1993.

P 93-1415, 93-1416, 93-1417, October 2, 1993.

P 93-1418, 93-1419, October 1, 1993.

P 93-1420, 93-1421, October 3, 1993.

P 93-1422, October 4, 1993.

P 93-1423, 93-1424, 93-1425, 93-1426, 93-1427, 93-1428, 93-1429, 93-1430, October 3, 1993.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51826]" and the specific PMN number should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099, Washington, DC 20460 (202) 260–3532.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408),Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), ETG–102 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

P 93–1331

Manufacturer. Confidential.
Chemical. (G) Acrylate-methacrylate copolymer, salt.
Use/Production. (G) Coatings and printing inks for paper, metals and plastics. Prod. range: Confidential.

P 93–1332

Manufacturer. Confidential.
Chemical. (G) Acrylate-methacrylate copolymer, salt.
Use/Production. (G) Coatings and printing inks for paper, metals and plastics. Prod. range: Confidential.

P 93–1333

Manufacturer. Confidential.
Chemical. (G) Acrylate-methacrylate copolymer, salt.
Use/Production. (G) Coatings and printing inks for paper, metals and plastics. Prod. range: Confidential.

P 93–1334

Manufacturer. Confidential.
Chemical. (G) Acrylate-methacrylate copolymer, salt.
Use/Production. (G) Coatings and printing inks for paper, metals and plastics. Prod. range: Confidential.

P 93–1335

Manufacturer. Confidential.
Chemical. (G) Acrylate-methacrylate copolymer, salt.
Use/Production. (G) Coatings and printing inks for paper, metals and plastics. Prod. range: Confidential.

P 93–1336

Manufacturer. Confidential.
Chemical. (G) Acrylate-methacrylate copolymer, salt.
Use/Production. (G) Coatings and printing inks for paper, metals and plastics. Prod. range: Confidential.

P 93–1337

Manufacturer. Confidential.
Chemical. (G) Acrylate-methacrylate copolymer, salt.
Use/Production. (G) Coatings and printing inks for paper, metals and plastics. Prod. range: Confidential.

P 93–1338

Manufacturer. Confidential.
Chemical. (G) Acrylate-methacrylate copolymer, salt.
Use/Production. (G) Coatings and printing inks for paper, metals and plastics. Prod. range: Confidential.

P 93–1339

Manufacturer. E. I. du Pont de Nemours & Company, Inc.
Chemical. (G) Cyclic urea amino epoxy adduct.
Use/Production. (G) Open, nondispersive use (coating). Prod. range: Confidential.

P 93–1340

Manufacturer. Confidential.
Chemical. (G) Fatty poycarboxylic acid salt of alkylamine.
Use/Production. (G) Fuel additive. Prod. range: Confidential.

P 93–1341

Manufacturer. E. I. du Pont de nemours & Company, Inc.
Chemical. (G) Methacrylate acid copolymer.
Use/Production. (G) Precursor substance. Prod. range: Confidential.

P 93–1342

Manufacturer. E. I. du Pont de Nemours & Company, Inc.
Chemical. (G) Methacrylic acid copolymer.
Use/Production. (G) Precursor substance. Prod. range: Confidential.

P 93–1343

Manufacturer. E. I. du Pont de Nemours & Company, Inc.
Chemical. (G) Methacrylic acid copolymer.
Use/Production. (G) Precursor substance. Prod. range: Confidential.

P 93–1344

Manufacturer. E. I. du Pont de Nemours & Company, Inc.
Chemical. (G) Methacrylate acid copolymer.
Use/Production. (G) Precursor substance. Prod. range: Confidential.

P 93–1345

Manufacturer. Confidential.
Chemical. (G) Methacrylate acid copolymer.
Use/Production. (G) Precursor substance. Prod. range: Confidential.

P 93–1346

Manufacturer. E. I. du Pont de Nemours & Company, Inc.
Chemical. (G) Methacrylate acid copolymer.
Use/Production. (G) Precursor substance. Prod. range: Confidential.

P 93–1347

Manufacturer. Confidential.
Chemical. (G) Cyclic urea amino epoxy adduct.
Use/Production. (G) Open, nonndispersive use (coating). Prod. range: Confidential.

P 93–1348

Manufacturer. Confidential.
Chemical. (G) Methacrylic acid copolymer.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 93–1349

Manufacturer. Confidential.
Chemical. (G) Methacrylic acid copolymer.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 93–1350

Manufacturer. Confidential.
Chemical. (G) Methacrylic acid copolymer.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 93–1351

Manufacturer. Confidential.
Chemical. (G) Methacrylic acid copolymer.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 93–1352

Manufacturer. Confidential.
Chemical. (G) Methacrylic acid copolymer.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 93–1353

Manufacturer. Confidential.
Chemical. (G) Methacrylic acid copolymer.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 93–1354

Manufacturer. Courtaulds Aerospace.
Chemical. (G) Polyhydroxythioether disulfide.
Use/Production. (S) Fuel tank sealant. Prod. range: 625–5,000 kg/yr.

P 93–1355

Manufacturer. Confidential.

Chemical. (G) Cyclic carbonate acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 40,000–72,000 kg/yr.

P 93–1356

Manufacturer. Confidential.

Chemical. (G) Cyclic carbonate acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 40,000–72,000 kg/yr.

P 93–1357

Manufacturer. Confidential.

Chemical. (G) Cyclic carbonate arcylic polymer.

Use/Production. (S) Coatings. Prod. range: 40,000–72,000 kg/yr.

P 93–1358

Manufacturer. Confidential.

Chemical. (G) Cyclic carbonate arcylic polymer.

Use/Production. (S) Coatings. Prod. range: 40,000–72,000 kg/yr.

P 93–1359

Manufacturer. Confidential.

Chemical. (G) Cyclic carbonate acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 40,000–72,000 kg/yr.

P 93–1360

Manufacturer. Confidential.

Chemical. (G) Cyclic carbonate acrylic polymer.

Use/Production. (S) Coatings. Prod. range: 40,000–72,000 kg/yr.

P 93–1361

Importer. Toyo Dupont International, Ink.

Chemical. (G) 2-Propenoic acid, 2((3-((1-oxo-2 propenyl) oxo-2,2-bis ((1-oxo-2 propenyl)oxy) methyl) propoxyl) methyl)-2-((1-oxo-2-propenyloxy) methyl)-1,3-propane diyl ester.

Use/Import. (S) Printing ink (UV cure). Import range: 500–800 kg/yr.

P 93–1362

Manufacturer. Confidential.

Chemical. (G) Aliphatic epoxy amine adduct.

Use/Production. (G) Open, nondispersive use (coating). Prod. range: Confidential.

P 93–1363

Importer. Confidential.

Chemical. (G) Aliphatic epoxy amine adduct.

Use/Import. (G) Open, nondispersive use (coating). Import range: Confidential.

P 93–1364

Manufacturer. Confidential.

Chemical. (G) Poly arylene ether sulfone.

Use/Production. (G) Additive for composite board manufacture. Prod. range: Confidential.

P 93–1365

Manufacturer. Confidential.

Chemical. (G) Poly arylene ether sulfone.

Use/Production. (G) Additive for composite board manufacture. Prod. range: Confidential.

P 93–1366

Manufacturer. Confidential.

Chemical. (G) Poly arylene ether sulfone.

Use/Production. (G) Additive for composite board manufacture. Prod. range: Confidential.

P 93–1367

Manufacturer. Confidential.

Chemical. (G) Blocked polyester polyurethane.

Use/Production. (G) Component of coating with open use. Prod. range: 60,000–100,000 kg/yr.

P 93–1368

Manufacturer. DuCoa.

Chemical. (G) Hydroxyalkyl quaternary ammonium hydroxides.

Use/Production. (G) Cleaning agent for electronic products. Prod. range: Confidential.

P 93–1369

Manufacturer. Confidential.

Chemical. (G) *N,N'*-(Dialkyl heteromonocycle) aminochlorotriazine.

Use/Production. (S) Polyamide stabilizer, dye fixation improvement additive. Prod. range: Confidential.

Toxicity Data. Acute oral: LD50 2,789 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/kg (rabbit). Eye irritation: Slight (rabbit). Skin irritation: Slight (rabbit). Mutagenicity: Negative. Skin sensitization: Negative (guinea pig).

P 93–1370

Manufacturer. Confidential.

Chemical. (G) Acrylate-methacrylate copolymer, salt.

Use/Production. (G) Coatings and printing inks for paper, metals and plastics. Prod. range: Confidential.

P 93–1371

Manufacturer. Confidential.

Chemical. (G) Acrylate-methacrylate copolymer, salt.

Use/Production. (G) Coatings and printing inks for paper, metals and plastics. Prod. range: Confidential.

P 93–1372

Manufacturer. Confidential.

Chemical. (G) Acrylate-methacrylate copolymer, salt.

Use/Production. (G) Coatings and printing inks for paper, metals and plastics. Prod. range: Confidential.

P 93–1373

Manufacturer. Confidential.

Chemical. (G) Acrylate-methacrylate copolymer salt.

Use/Production. (G) Coatings and printing inks for paper, metals and plastics. Prod. range: Confidential.

P 93–1374

Manufacturer. Confidential.

Chemical. (G) Acrylate-methacrylate copolymer, salt.

Use/Production. (G) Coatings and printing inks for paper, metals and plastics. Prod. range: Confidential.

P 93–1375

Manufacturer. Interplastic Corporation.

Chemical. (G) Unsaturated polymer resin grinding vehicle.

Use/Production. (S) Reinforced plastics. Prod. range: Confidential.

P 93–1376

Importer. Hoechst Celanese Corporation.

Chemical. (S) Carbonic acid, dimethylester, polymer with 1,6-hexanediol; benzene, 1,3-bis (1-isocyanato-1-methyl-ethyl; 2-propenoic acid, buty ester; 2-propenoic acid, 2-methyl-,1,7,7-trimethyl-bicyclo 2,2,1 hept-2-ester, exo; ethanol, 2,2" iminobis-; propanoic acid,3-hydrox- 2yl ester; exo ,(hydroxymethyl)-2-methyl;1,4 =butanediol.

Use/Import. (G) Binder for paints. Import range: 4,000–3,8000 kg/yr.

P 93–1377

Importer. Confidential.

Chemical. (G) Monochlorotriazine, bis substituted azosubstituted cetyloxyethyl.

Use/Import. (G) Colorant. Import range: Confidential.

Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat). Acute dermal: LD50 > 2,000 mg/yr (rat). Acute Static: LC50 > 100 mg/l (zebra fish). Eye irritation: None (rabbit). Skin irritation: Negligible (rabbit). Mutagenicity: Negative. Skin sensitization: Negative (guinea pig).

P 93–1378

Importer. Confidential.

Chemical. (G) Phosphorylated polyester, compound with reaction products of fatty acid with alkanolamine.

Use/Import. (G) Additive, open, nondispersive use. Import range: Confidential.

Toxicity Data. Skin irritation: Moderate (rabbit).

P 93–1379

Importer. Dow Corning Corporation.
Chemical. (G) Oximo-functional polyorganosiloxane.
Use/Import. (G) Silicone coating. Import range: Confidential.
Toxicity Data. Acute oral: LD50 > 2,000 mg/kg. Acute dermal: LD50 > 2,000 mg/kg (rabbit). Eye irritation: Moderate (rabbit).

P 93–1380

Importer. Confidential.
Chemical. (S) Ethylene trimer.
Use/Import. (G) Chemical feedstock. Import range: Confidential.

P 93–1381

Manufacturer. Confidential.
Chemical. (G) Aliphatic ether.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 93–1382

Manufacturer. Confidential.
Chemical. (G) Epoxy acrylate.
Use/Production. (G) Open, nondispersive use as a printing ink binder. Prod. range: Confidential.

P 93–1383

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethane based on polyisocyanates, polyols and polyamines.
Use/Production. (G) Open, nondispersive use as a printing ink.

P 93–1384

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethane based on polyisocyanates, polyols and polyamines.
Use/Production. (G) Open, nondispersive use as a printing ink.

P 93–1385

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethane based on polyisocyanates, polyols, and polyamines.
Use/Production. (G) Open, nondispersive use as a printing ink.

P 93–1386

Manufacturer. Sanncor Industries,.
Chemical. (G) Polyurethane based on polyisocyanates, polyols and polyamines.
Use/Production. (G) Open, nondispersive use as a printing ink.

P 93–1387

Manufacturer. Sanncor Industris,Inc.
Chemical. (G) Polyuretane based on polyisocyanates, polyols and polyamines.
Use/Production. (G) Open, nondispersive use as a printing ink.

P 93–1388

Manufacturer. Sanncor Indusrties, Inc.
Chemical. (G) Polyurethane based on polyisocyanates, polyols and polyamines.
Use/Production. (G) Open, nondispersive use as a printing ink.

P 93–1389

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethane based on polyisocyanates, polyols and polyamines.
Use/Production. (G) Open, nondispersive use as a printing ink.

P 93–1390

Manufacturer. Sanncor Industries, Inc.
Chemical. (G) Polyurethane based on polyisocyanates, poyols and polyamines.
Use/Production. (G) Open, nondispersive use as a printing ink.

P 93–1391

Manufacturer. Confidential.
Chemical. (G) C_6- Olefin, branched and linear.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 > 5.0 g/kg (rat). Acute dermal: LD50 > 3.0 g/kg (rabbit). Eye irritation: Slight (rabbit). Skin irritation: Negligible (rabbit).

P 93–1392

Manufacturer. Confidential.
Chemical. (G) C_6- olefins, branched and linear.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: LD50 > 5.0 g/kg (rat). Acute dermal: LD50 > 3.0 g/kg (rabbit). Inhalation: LC50 > 50,000 ppm (rats). Eye irritation: Slight (rabbit). Skin irritation: Negligible (rabbit).

P 93–1393

Manufacturer. DSM Engineering Plastics Inc.
Chemical. (S) Poly(imino-1,4 butanediylimino(1,6-dioxo-1,6-hexanediyl) plus glass fiber.
Use/Production. (G) Raw material for injection molded articles. Prod. range: Confidential.

P 93–1394

Importer. Ciba-Geigy Corporation.
Chemical. (G) Substituted azo triazine dye.
Use/Import. (G) Textile dye. Import range: Confidential.
Toxicity Data. Acute oral: LD50 > 2,000 mg/kg (rat). Acute dermal: LD50 > 2, mg/kg (rat). Eye irritation: None (Rabbit). Skin irritation: Negligible (rabbit).

P 93–1395

Manufacturer. Elf Atochem North America.
Chemical. (S) Acryloxyethyldimethylbenzyl ammonium chloride.
Use/Production. (S) Monomer used in the synthesis of water treatment polymer. Prod. range: 10,000–20,000 kg/yr.

P 93–1396

Manufacturer. 3M.
Chemical. (G) Copolymer containing isooctylacrylate.
Use/Production. (G) Adhesive. Prod. range: Confidential.

P 93–1397

Manufacturer. Takasago International Corporation.
Chemical. (G) Cyclanic monocarbxylic ester.
Use/Production. (G) Soap and detergent additive. Prod. range: 800–1,000 kg/yr.

P 93–1398

Manufacturer. Confidential.
Chemical. (G) Phenol-formaldehyde, penttanediol, potassium hydride.
Use/Production. (S) Bond mineral aggregates (sand) used in the production of metal castings. Prod. range: Confidential.

P 93–1399

Manufacturer. The P. D. George Company.
Chemical. (S) Hexanediol; trimethylolpropane; diphenylmethane diisocyanate.
Use/Production. (S) Intermediate for wire enamel blends. Prod. range: 60,000 kg/yr.

P 93–1400

Manufacturer. Westvaco Corporation, Chemical Division.
Chemical. (S) Reaction product of maleated tall oil fatty acid and ethylene glycol.
Use/Production. (G) Intermediate to form salts as described in PMN TS-B7930C corrosion inhibitor for destructive and uses. Prod. range: Confidential.

P 93–1401

Manufacturer. Westvaco Corporation Chemical Division.
Chemical. (S) Reaction product of maleated tall oil fatty acid and ethylene glycol.

Use/Production. (G) Intermediate to form salts as described in PMN, ester BB930C corrosion inhibitor, for destructive and uses. Prod. range: Confidential.

P 93–1402

Manufacturer. Westvaco Corporation, Chemical Division.

Chemical. (S) Reaction product of maleated tall oil fatty acid and ethylene glycol.

Use/Production. (G) Intermediate to form salts as described in PMN, TS-B7930C corrosion inhibitor, for destructive and uses. Prod. range: Confidential.

P 93–1403

Manufacturer. Westvaco Corporation, Chemical Division.

Chemical. (S) Reaction product of maleated tall oil fatty acid ethylene glycol.

Use/Production. (G) Intermediate to form salts as described in PMN, TS-B7930C corrosion inhibitor, for destructive and uses. Prod. range: Confidential.

P 93–1404

Manufacturer. Westvaco Corporation. Chemical Division.

Chemical. (G) Reaction products of maleated tall oil fatty acid polyhydroxy polyalkane ester and ammonium or potassium hydroxide.

Use/Production. (G) Corrosion inhibitor, for destructive and contained uses. Prod. range: Confidential.

P 93–1405

Manufacturer. Westvaco Corporation Chemical Division.

Chemical. (G) Reaction products of maleated tall oil fatty acid polyhydroxy polyalkane ester and ammonium or potassium hydroxide.

Use/Production. (G) Corrosion inhibitor, for destructive and contained uses. Prod. range: Confidential.

P 93–1406

Manufacturer. Westvaco Corporation Chemical Division.

Chemical. (G) Reaction products of maleated tall oil fatty acid polyhydroxy polyalkane ester and ammonium or potassium hydroxide.

Use/Production. (G) Corrosion inhibitor, for destructive and contained uses. Prod. range: Confidential.

P 93–1407

Manufacturer. Westvaco Corporation, Chemical Division.

Chemical. (G) Reaction products of maleated tall oil fatty acid polyhydroxy polyalkane ester and ammonium or potassium hydroxide.

Use/Production. (G) Corrosion inhibitor, for destructive and contained uses. Prod. range: Confidential.

P 93–1408

Manufacturer. Westvaco Corporation, Chemical Division.

Chemical. (G) Reaction products of maleated tall oil fatty and polyhydroxy polyalkane ester and ammonium or potassium hydroxide.

Use/Production. (G) Corrosion inhibitor, for destructive and contained uses. Prod. range: Confidential.

P 93–1409

Manufacturer. Confidential.

Chemical. (G) Reaction products of maleated tall oil fatty acid polyhydroxy polyalkane ester and ammonium or potassium hydroxide.

Use/Production. (G) Corrosion inhibitor, for destructive and contained uses. Prod. range: Confidential.

P 93–1410

Manufacturer. Confidential.

Chemical. (G) Reaction products of maleated tall oil fatty acid polyhydroxy polyalkane ester and ammonium or potassium hydroxide.

Use/Production. (G) Corrosion inhibitor, for destructive and contained uses. Prod. range: Confidential.

P 93–1411

Manufacturer. Westvaco Corporation, Chemical Division.

Chemical. (G) Reaction products of maleated tall oil fatty acid polyhydroxy polyalkane ester and ammonium or potassium hydroxide.

Use/Production. (G) Corrosion inhibitor, for destructive and contained uses. Prod. range: Confidential.

P 93–1412

Importer. Elf Atochem North America.

Chemical. (S) Methacryloxyethyldiethyl ammonium chloride.

Use/Import. (G) Monomer use in synthesis of water treatment polymers. Import range: 10,000–20,000 kg/yr.

P 93–1413

Manufacturer. Confidential.

Chemical. (G) Styrenated epoxy acrylate polymer.

Use/Production. (G) Resin for protective industrial coating. Prod. range: Confidential.

P 93–1414

Importer. Hoechst Celanese Corporation.

Chemical. (G) Butanoic acid, 4-(substituted)-*H*-imidazol-2-yl azo-(substituted), ethyl ester.

Use/Import. (S) Dyestuff for polyester fiber. Import range: 500–2,500 kg/yr.

Toxicity Data. Acute oral: LD50 2.00 mg/kg (rat). Eye irritation: None (rabbit). Skin irritation: Negligible (rabbit). Mutagenicity: Negative.

P 93–1415

Importer. Hoechst Celanese Corporation.

Chemical. (G) Oxazolidine modified epoxy-amine adduct diluted in butyl glycol

Use/Import. (S) Cathodic electrodeposition primer, grinding vehicle. Import range: 10,000–30,000 kg/yr.

P 93–1416

Manufacturer. Confidential.

Chemical. (G) Complex epoxy resin/amine adduct.

Use/Production. (G) Crosslinking agent for epoxy resins. Prod. range: Confidential.

P 93–1417

Manufacturer. Confidential.

Chemical. (S) Polyester comprised of cyclohexane dimethylol tetrahydrophthalic anhydride + trimeleic anhydride.

Use/Production. (S) Printing ink. Prod. range: Confidential.

P 93–1418

Importer. Confidential.

Chemical. (G) Benzonitrile.

Use/Import. (S) Component of liquid crystal mixture for liquid crystal display. Import range: Confidential.

P 93–1419

Manufacturer. Hitac Adhesives and Coatings, Inc.

Chemical. (G) Water dispersible polyurethane with 5 com leaving isocyanate and active hydrogen.

Use/Production. (G) Adhesive tape component, coating. Prod. range: Confidential.

P 93–1420

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) 1,6-Hexanediol; cyclohexane, 1-1'-methylenebis(4-isocyanato)-; hexanedioic acid; 1,3-Benzenedicarboxylic acid; fatty acids, C_{18}-unsaturated, dimers, hydrogeenated; propanoic hydroxy; hydroxymethyl; methyl, cyclohexanemethamine; amino; trimethyl.

Use/Production. (G) Binder for paints. Prod. range: 4,000–38,000 kg/yr.

P 93–1421

Manufacturer. Confidential.

Chemical. (G) Alkyoxyamine mercaptide salt of a mono-alkyl thiadiazole disulfide.

Use/Production. (G) Marine engine oil addition. Prod. range: Confidential

P 93–1422

Manufacturer. Confidential.
Chemical. (G) Substituted polyethylene biometic amine tint.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 93–1423

Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (G) Silane substituted macrocyclic polyethyl.
Use/Production. (G) Intermediate for a molecular recognition material. Prod. range: Confidential.

P 93–1424

Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (G) Silane substituted macrocyclic polyether.
Use/Production. (G) Intermediate for a molecular recognition material. Prod. range: Confidential.

P 93–1425

Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (G) Silane substituted macrocyclic polyether.
Use/Production. (G) Intermediate for a molecular recognition material. Prod. range: Confidential.

P 93–1426

Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (G) Silane substituted macrocyclic polyether.
Use/Production. (G) Intermediate for a molecular recognition material. Prod. range: Confidential.

P 93–1427

Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (G) Molecular recognition material (organic ligand modified silica gel).
Use/Production. (G) Used in the removal of metals from dilute aqueous solutions. used in the detection of metals dilute. Prod. range: Confidential.

P 93–1428

Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (G) Molecular recognition material (organic ligand modified silica gel).
Use/Production. (G) Used in the removal of metals from dilute aqueous solutions, aslo the detection of metals in aquous. Prod. range: Confidential.

P 93–1429

Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (G) Molecular recognition material (organic ligand modified silica gel).
Use/Production. (G) Used in the removal of metals from dilute. Prod. range: Confidential.

P 93–1430

Manufacturer. IBC Advanced Technologies, Inc.
Chemical. (G) Molecular recognition material (organic ligand modified silica gel).
Use/Production. (G) Used in the removal of metals from dilute. Prod. range: Confidential.

List of Subjects

Environmental protection, Premanufacture notifications.

Dated: December 13, 1993.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–31477 Filed 12–23–93; 8:45 am]
BILLING CODE 6560–50–F

[OPPTS–59975; FRL–4751–1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 10 such PMN(s) and provides a summary of each.

DATES: Close of review periods:
Y 94–4, 94–5, November 9, 1993.
Y 94–6, November 18, 1993.
Y 94–7, November 24, 1993.
Y 94–9, December 8, 1993.
Y 94–10, December 13, 1993.
Y 94–11, 94–12, December 14, 1993.
Y 94–13, December 21, 1993.
Y 94–14, December 19, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), ETG–102 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays.

Y 94–4

Manufacturer. Air-Products and Chemicals, Inc.
Chemical. (G) Carboxylated, vinyl acetate, acrylic ester copolymer.
Use/Production. (G) Use as a component of water-based adhesives. Prod. range: Confidential.

Y 94–5

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (S) Isocyanate or melamine cured industrial metal coatings. Prod. range: Confidential.

Y 94–6

Manufacturer. Confidential.
Chemical. (G) Ethene. polymer, with 2-propenoic acid methyl ester, and sodium-2-propenoate.
Use/Production. (G) Polymer seal layer, polymer blend component. Prod. range: Confidential.

Y 94–7

Importer. Confidential.
Chemical. (S) Ethanol, polymer with ethene and oxirane.
Use/Import. (G) Antiblooming agent, mold release agent. Import range: confidential.

Y 94–9

Manufacturer. Confidential.
Chemical. (G) Aqueous acrylic resin dispersion (emulsion).
Use/Production. (G) Resin for industrial coatings. Prod. range: Confidential.

Y 94–10

Manufacturer. Estron Chemical, Inc.
Chemical. (G) Acrylic terpolymer.
Use/Production. (S) Additive for industrial coatings to improve surface appearance. Prod. range: Confidential.

Y 94–11

Manufacturer. Confidential.

Chemical. (G) Vegetable oil, polyols and benzene, 1,3-diisocyanatomethyl-polymer.

Y 94–12

Manufacturer. Confidential.

Chemical. (G) Tall oil fatty acids with pentaerythritol, trimethylolpropane, aromatic anhydrides, and benzene, 1,3-diisocyanatomethyl-polymer.

Y 94–13

Manufacturer. Boulder Scientific Company.

Chemical. (G) Resorcinol/formaldehyde polymer, monopotassium salt.

Use/Production. (S) Ion exchange resin. Prod. range: Confidential.

Y 94–14

Manufacturer. Confidential.

Chemical. (G) Acrylic grafted poly amine-ester.

Use/Production. (G) Printing ink resin. Prod. range: Confidential.

List of Subjects

Environmental protection, Premanufacture notification.

Dated: December 13, 1993.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–31472 Filed 12–23–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Federal Emergency Management Advisory Committee for the National Urban Search and Rescue Response System

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.), announcement is made of the following committee meeting:

Name: Advisory Committee for the National Urban Search and Rescue Response System.

Dates of Meeting: January 7–8, 1993.

Place: Renaissance Hotel, 13869 Park Center Road, Herndon, Virginia 22071.

Time: January 7, 8:30 a.m.–6 p.m.; January 8, 8:30 a.m.–5 p.m.

Proposed Agenda: The committee will be briefed on the updated program; Hurricane Emily activation; elections for Chair; renewal procedures for committee members and bylaws; and FEMA reorganization.

The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. All members of the public interested in attending the meeting should contact Kimberly C. Vásconez at 202–646–4335.

Minutes of the meeting will be prepared and will be available for public viewing at the Federal Emergency Management Agency, Operations Planning and Response Branch, 500 C Street, SW., room 613, Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Richard W. Krimm,

Deputy Associate Director.

[FR Doc. 93–31491 Filed 12–23–93; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Seiwa America, Inc., 4900 Blazer Parkway, Dublin, OH 43017, Officers: Kazunari Tada, President/Director, Solchiro Miyazaki, Chairman/Director.

Eagle Express, Inc., 6998 N.W. 25th Street, Miami, FL 33122, Officers: Martha Rodriguez, President, Edgar F. Lara, Vice President.

International Director Marketing (IDM), dba Indochina Lines, 10,772 Capital Avenue, #7, Garden Grove, CA 92643, Officer: Quang Van Bui, President/CEO.

Crystal Forwarding, Inc., 2385 Camino Vida Roble, Suite 209, Carlsbad, CA 92009, Officers: Han Helders, President/Director/Stockholder, Roberta M. Chapas, Corp. Secretary.

Dated: December 20, 1993.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–31500 Filed 12–23–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Request for Nominations of Members for Clinical Practice Guideline Panel on Management of Chronic Pain: Headache

The Agency for Health Care Policy and Research (AHCPR) has announced a request for proposals and intends to award a contract to a non-profit organization to develop, and then to update, a clinical practice guideline, and to develop related medical review criteria, standards of quality, and performance measures for management of chronic pain: Headache. The contractor will establish a panel of health care experts and consumers to assist in developing a clinical practice guideline on management of chronic pain: headache and to develop medical review criteria, standards of quality, and performance measures. The AHCPR, on behalf of the contractor, invites nominations of qualified individuals to serve as chairperson(s) and members of the panel.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (See 42 U.S.C. 299–299c–6 and 1320b–12.) The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102–410) which was enacted on October 13, 1992, extended the authorization of AHCPR and amended certain provisions related to the development of clinical practice guidelines. In keeping with its legislative mandates, AHCPR is arranging for the development, periodic review, and updating of clinically relevant guidelines that may be used by physicians, other health care practitioners, educators, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed. Based on the guidelines produced, AHCPR oversees development of medical review criteria, standards of quality, and performance measures.

Section 912 of the Act (42 U.S.C. 299b–1(b)), as amended by Public Law 102–410, requires that the guidelines:

1. Be based on the best available research and professional judgment;

2. Be presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers;

3. Be presented in treatment-specific or condition specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care;

4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and

5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 913 of the Act (42 U.S.C. 299b–2) describes two mechanisms through which AHCPR can arrange for development of guidelines: 1. Multidisciplinary, private sector panels of qualified experts and health care consumers may be convened; and 2. Contracts may be awarded to public and private non-profit organizations. Contractors are required to appoint AHCPR-approved panels of experts and consumers to advise them. The AHCPR has elected to use the contract process for development of a clinical practice guideline for management of chronic pain: Headache.

Section 914 of the Act (42 U.S.C. 299b–3(a)), as amended by Public Law 102–410, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;

2. Improve methods of diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;

3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatment; and

4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with title IX of the PHS Act and section 1142 of the Social Security Act, the AHCPR Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

Panel Nominations

The panel that will assist the contractor in developing the clinical practice guideline for management of chronic pain: headache will consist of two co-chairpersons and ten to fifteen other members. The work will be divided into three phases. Phase I is development of the clinical practice guideline. Phase II is development of medical review criteria, standards of quality, and performance measures based on the guideline. Phase III is the update of the guideline. One-third of the panel members will rotate off the panel after Phase II of the contract and be replaced prior to Phase III to add new expertise to the panel.

The role of the panel members is to assist the contractor to: Develop a decisionmaking process; determine the focus of the guideline and the questions to be addressed; advise and monitor the review and analysis of the scientific literature; consider and advise on principal health care issues; monitor and provide counsel on development of medical review criteria, standards of quality, and performance measures; and review and approve the interim and final drafts of the different versions of the guideline. The co-chairpersons will provide leadership to the panel in carrying out these roles.

To assist in identifying members for the panel, AHCPR is requesting recommendations from a broad range of interested individuals and organizations, including physicians representing primary care and relevant specialties, physicians' assistants, nurses, nurse practitioners, pharmacists, allied health and other health care practitioners, health care institutions, and consumers with pertinent experience or information. In making panel selections, AHCPR, will maintain, to the extent possible, a balance of individuals selected from academic settings and individuals selected without full-time academic appointments. At least two members of this panel shall be individuals who do not derive their primary source of revenue directly from the performance of procedures discussed in this guideline. Some participants in the guideline process (panel members, consultants, peer or pilot reviewers) should have expertise in epidemiology, health services research, or health economics, and familiarity with the clinical conditions being studied. To the extent possible, the panel should have appropriate representation in terms of gender, minority populations, and geographic areas of the United States.

The AHCPR is especially interested in receiving nominations of individuals with: (1) Experience in and/or commitment to developing clinical guidelines, medical review criteria, standards of quality, and performance measures; (2) relevant training and clinical experience; (3) relevant experience in basic and/or clinical research in pain management, particularly of headache pain, including publication of relevant peer-reviewed articles; (4) demonstrated interest in quality of care, medical outcomes, and medical effectiveness; (5) knowledge of the epidemiology of headaches; (6) experience in health services research or health economics, with expertise in the areas of chronic pain and/or headache; and (7) personal experience of chronic headache pain, either as a patient, family member, friend of a patient, or as a person who actively works with consumer groups interested in chronic pain management, particularly with reference to headaches. Nominees should have no substantial financial interests or professional affiliations that would significantly jeopardize the integrity of the guideline development process or the final products.

This notice requests nominations of qualified individuals to serve on the panel as members or as co-chairpersons. The functions of the panel co-chairpersons are critical to the process of developing guidelines. Co-chairpersons provide leadership regarding methodology, literature review, panel deliberations, and preparation of the final products. Nominations for co-chairpersons and members should take into consideration the criteria specified below, which AHCPR will use in approving final selections:

- Relevant training and clinical experience;
- Demonstrated interest in quality assurance and research on the clinical condition(s) under consideration and the related treatment of the condition(s), including publication of relevant peer-reviewed articles;
- Commitment to the need to produce clinical practice guidelines;
- Recognition in the field with a record of leadership in relevant activities;
- Demonstrated capacity to respond to consumer concerns;
- Prior experience in developing guidelines for the clinical condition in question; and
- No substantial financial interests or professional affiliations that would significantly impair the scientific integrity of the guidelines or final products.

Subsequent to approval by AHCPR, the contractor will appoint the panel co-chairpersons. After the panel co-chairpersons have been appointed, nominations for members of the panel will be reviewed by the contractor and the co-chairpersons, prior to proposing panel members to AHCPR. Following AHCPR review and approval of proposed members' qualifications, review of the overall composition of the panel to ensure representation of a range of expertise and experience, and review of potential conflicts of interest, the contractor will appoint panel members.

Nominations should indicate whether the individual is being recommended to serve on the panel as a co-chairperson or as a member. Each nomination must include two copies of the individual's curriculum vitae or resume, and two copies of a letter of nomination with a statement of the rationale for the specific nomination.

To be considered, nominations must be received by February 5, 1994, at the following address: Margaret Coopey, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Boulevard, suite 310, Rockville, MD 20852. Phone: (301) 594–4015, Fax: (301) 594–4027.

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Program Note, "Clinical Practice Guideline Development," dated August 1993. This document describes AHCPR's activities with respect to clinical practice guidelines, including the process and criteria for selecting panels. This document may be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; or call Toll-Free: 1–800–358–9295.

Also, information can be obtained by contacting the Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, 6000 Executive Blvd., suite 310, Rockville, MD 20852. Information about the contract, RFP No. 282–93–0029, can be obtained from Michele Trotter, Public Health Service, Division of Acquisition Management, Government Acquisition Branch, room 5–101, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857. Requests for copies of the contract solicitation may be transmitted by facsimile to Ms. Trotter at 301–443–3849.

Dated: December 17, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93–31446 Filed 12–23–93; 8:45 am]

BILLING CODE 4160–90–U

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be open to the public on Monday, January 24, 1994, from 9 a.m. to 4:30 p.m. A closed portion of the Council will meet on Tuesday, January 25, from 8:30 a.m. to 11 a.m.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S. Code, and section 10(d) of the Federal Advisory Committee Act, a meeting closed to the public will be held on January 25, 1994, from 8:30 a.m. to 11 a.m. to review, discuss, and evaluate grant applications. The discussion and review of grant applications could reveal confidential personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

ADDRESSES: The meeting will be held at the Holiday Inn Crowne Plaza Metro Center, 775 12th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Deborah L. Queenan, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, suite 603, Rockville, Maryland 20852, (301) 594–1459.

In addition, if sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, the Assistant Administrator for Equal Opportunity, AHCPR, on (301) 594–6666 no later than January 7, 1994.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to the activity of AHCPR to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and the organization, financing, and delivery of health care services.

The Council is composed of public members appointed by the Secretary. These members are: Linda H. Aiken, Ph.D.; Edward C. Bessey, M.B.A.; Marian F. Bishop, Ph.D.; Linda Burnes Bolton, Dr.P.H.; Joseph T. Curti, M.D.; John W. Danaher, M.D.; David E. Hayes-Bautista, Ph.D.; William S. Kiser, M.D.; Kermit B. Knudsen, M.D.; Norma M. Lang, Ph.D.; Barbara J. McNeil, M.D., Ph.D.; Walter J. McNerney, M.H.A.; Lawrence H. Meskin, D.D.S., Ph.D.; Theodore J. Phillips, M.D.; Louis F. Rossiter, Ph.D.; Barbara Starfield, M.D.; and Donald E. Wilson, M.D.

There also are Federal ex officio Members. These members are: Administrator, Substance Abuse and Mental Health Services Administration; Director, National Institutes of Health; Director, Centers for Disease Control and Prevention; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

On Monday, January 24, 1994, the open portion of the meeting will begin at 9 a.m. with the call to order by the Council Chairman. Philip R. Lee, M.D., Assistant Secretary for Health, Department of Health and Human Services, will address the Council on Health Care Reform and other departmental missions. The Administrator, AHCPR, will provide an update on AHCPR activities. The AHCPR Evaluation Officer will conclude the morning meeting with an update on AHCPR-supported guideline evaluation activities followed by the Director of the Office of Health Technology Assessment's update on AHCPR's technology assessment criteria.

In the afternoon the Deputy Administrator, AHCPR, and staff will discuss the National Medical Expenditure Survey (NMES). Concluding the Monday meeting will be a discussion of two Patient Outcomes Research Team (PORTs) projects. The Council will recess at 4:30 p.m.

On Tuesday, January 25, 1994, the Council will begin the closed portion of the meeting to review grant applications

from 8:30 a.m. to 11 a.m. The meeting will then adjourn at 11:30 a.m.

Agenda items are subject to change as priorities dictate.

Dated: December 16, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93–31447 Filed 12–23–93; 8:45 am]

BILLING CODE 4160–90–U

Administration for Children and Families

[Program Announcement No. ACF/ACYF/NCS 93623–932]

Runaway and Homeless Youth Program, National Communication System: Availability of Financial Assistance for Fiscal Year (FY) 1994 and Request for Applications

AGENCY: Family and Youth Services Bureau, Administration on Children, Youth, and Families (ACYF), Administration for Children and Families (ACF).

ACTION: Announcement of availability of financial assistance and request for applications for the National Communication System for Runaway and Homeless Youth Crisis Hotline Services.

SUMMARY: The Family and Youth Services Bureau (FYSB) of the Administration on Children, Youth and Families (ACYF) announces the availability of approximately $826,900 in FY 1994 for the award of one grant on a competitive basis to operate a National Communication System (NCS) for runaway and homeless youth. This announcement contains all of the application materials needed to apply for the grant.

The purpose of the NCS is to provide information and referral services and crisis counseling to runaway and homeless youth and their families, and to assist runaway and homeless youth in communicating with their families and with service providers. The successful applicant will be required to provide communication services on a 24 hour per day, seven days per week basis throughout the United States, including Alaska and Hawaii.

DATES: The closing date for submission of applications is on February 10, 1994.

ADDRESSES: Applications should be sent to: The National Communication System for Runaway and Homeless Youth, U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Room 341–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Anita G. Wright, MSW, Administration on Children, Youth and Families, Family and Youth Services Bureau, Program Operations Division, P.O. Box 1182, Washington, DC 20013; Telephone: (202) 205–8030.

Part I: General Information

A. Background Information

The goals of the Basic Center Program for Runaway and Homeless Youth are: (a) To alleviate the problems of runaway and homeless youth, (b) to reunite youth with their families and to encourage the resolution of intrafamily problems through counseling and other services, (c) to strengthen family relationships and to encourage stable living conditions for youth, and (d) to help youth decide upon a future course of action.

To address the interstate nature of the runaway and homeless youth problem, the NCS was initiated in FY 1974 as an eight-month research and demonstration grant funded by the then Department of Health, Education and Welfare. It was designed to provide toll-free telephone services to runaway youth in the contiguous United States. This project is now specifically authorized by Part C, Section 331 of the Runaway and Homeless Youth Act (as amended).

B. Legislative Authority

The NCS grant is authorized under Part C, Section 331 of the Runaway and Homeless Youth Act (Pub. L. 102–586), 42 U.S.C. 5701 *et seq.* This Act was originally enacted as Title III of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93–415), and was amended by a number of statutes, including the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690), and Public Law 102–586. Regulations governing the Runaway and Homeless Youth Program are published in 45 CFR part 1351. The Act is administered by the Family and Youth Services Bureau within the Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

In accordance with this legislation, the NCS grantee must meet the 10 percent non-Federal share and confidentiality requirements of Sections 382 and 383 of the Runaway and Homeless Youth Act. Section 382 of the Act is explained in Section G of Part I of this announcement; Section 383 of the Act strictly prohibits the disclosure or transfer of records containing the identity of individual youths to any person or to any public or private agency.

C. Program Purpose

The overall purpose of the NCS is to link youth with a family member and/or an available resource that can provide and/or assist the youth in acquiring needed services. To fulfill this purpose, the System must include:

(1) A neutral and available channel of communication through which runaway and homeless youth may re-establish contact with their parents or guardians;

(2) The identification of resources available to runaway and homeless youth in the area in which the youth are located;

(3) The identification of home-community resources to assist young people who are contemplating running away and who contact the communication system before they run;

(4) The provision of crisis intervention counseling to clients, when appropriate, to address problems and/or issues surfaced during the telephone contact; and

(5) The provision of a service by which families/guardians may leave messages for runaways and which provide families/guardians with advice and referrals to agencies which might assist them.

D. Eligible Applicants

Any State, unit of local government, combination of units of local government, public or private agency, organization, institution, or other non-profit entity is eligible to apply for these funds. Federally recognized Indian Tribes are eligible to apply. Non-Federally recognized Indian Tribes and urban Indian organizations are also eligible to apply for grants as private, non-profit agencies.

Section 331 of the Act requires that priority be given to applicants that have documented experience in providing telephone services to runaway and homeless youth.

E. Availability of Funds

The Family and Youth Services Bureau (FYSB) will award one grant of approximately $826,900 in FY 1994 for the operation of a National Communication System. Non-competitive continuation grant awards for each of years two through five will be approximately $900,000.

F. Duration of Project

The Family and Youth Services Bureau will award one new grant for a National Communication System for up to give years (60-month project period). The initial grant award, made on a

competitive basis, will cover a one year (12-month) budget period. Applications for continuation grants beyond the first budget period, but within the 60-month project period, will be considered in subsequent years in a non-competitive basis, subject to the availability of funds, satisfactory performance of the grantee and determination that continued would be in the best interest of the government.

G. Grantee Share of the Project

The Runaway and Homeless Youth Act requires a non-Federal matching requirement of ten percent of the total Federal funds awarded. For example, a project requesting $826,900 in Federal funds for the first year budget period must include a match of at least $82,690 during the first year (10% of the Federal share). The non-Federal share may be met by cash or in-kind contribution. Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants. Applicants which do not provide the required percentage of non-Federal share will not be funded.

Part II: Evaluation Criteria

The five criteria that follow will be used to review and evaluate each application and should be used in developing the program narrative. The point values following each criterion heading indicate the numerical weight each criterion will be accorded in the review process.

Criterion 1. *Objectives and Need for Assistance (15) Points).* Pinpoint any relevant, economic, social, financial, institutional or other problems requiring a solution. Demonstrate the need for the assistance and state the goals of service objectives of the project. Supporting documentation or other testimonies from concerned interest other than the applicant may be used. Give a precise location of the project site(s) and area(s) to be served by the proposed project. Maps or other graphic aids may be attached. (The applicant should refer to Part I, Section C of this announcement for a description of this program's purposes.)

Criterion. 2. *Results or Benefits Expected (20 Points).* Identify the results and benefits to be derived from the project. State the numbers of runaway and homeless youth and their families to be served, and describe the types of quantities of services to be provided. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project.

Criterion 3. *Approach (35 Points).* Outline a plan of action pertaining to the scope of the project and detail how the proposed work will be accomplished. Describe any unusual features of the project, such as extraordinary social and community involvement, and how the project will be maintained after termination of Federal support. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved.

Criterion 4. *Staff Background and Organizational Experience (20 or 25 Points).* List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution. Summaries the background and experience of the project director and key project staff and the history of the organization. Demonstrate the ability to effectively managed the project and to coordinate activities with other agencies. Applicants are encouraged to discuss staff and organizational experience in working with runaway and homeless youth. (Applicants may refer to the staff resumes and to the Organizational Capability Statement included in the submission.) Legislation authorizing the NCS requires that priority for funding be given to applicants that have experience in providing telephone services to runaway and homeless youth. Therefore, applicants with at least three years of documented experience providing crisis intervention counseling services to runaway and homeless youth using an existing telecommunications system may be awarded up to 25 points. Applicants without such experience still be awarded a maximum of 20 points for this criterion.

Criterion 5. *Budget Appropriations (10 Points.)* Demonstrate that the project's costs (overall costs, average cost per youth served, costs for different services) are reasonable in view of the anticipated results and benefits. (Applicants may refer (1) to the budget information on presented in Standard Forms 424 and 424A and in the associated budget justification, and (2) to the results or benefits expected as identified under Criterion 2.)

The Program Narrative information provided by the applicant in response to the minimum responsibilities of the grantee identified in Part III of this announcement must be organized and presented according to the above five evaluation criteria.

Part III: Minimum Responsibilities of the Grantee

In addressing the evaluation criteria outlined in Part II of this announcement, each applicant must address the following items, on a nationwide basis, in the program narrative section of their application.

Objectives and Need for Assistance

- The applicant must specify the goals and objectives of the program and state how implementation will fulfill the purposes of the legislation identified in Part I of this announcement.
- The applicant must demonstrate the need for the proposed program by discussing the major issues and problems related to runaway and homeless youth and their use of hotline services, the availability of existing hotline services and how the proposed program would help resolve the issue/problems identified and augment existing services.
- The applicant must provide descriptive information on the overall national availability of information, referral, and crisis counseling services to runaway and homeless youth.
- The applicant must discuss existing non-hotline services for runaway and homeless youth and how the applicant would work with such agencies and organizations to help ensure that callers are properly assisted.
- The applicant must provide, in graphic form, the layout of the physical facility where the services would be provided, focusing on the telephone stations and computer terminals.

Results and Benefits Expected

- The applicant must indicate the number of runaway and homeless youth callers and their families to be assisted annually under each component of the proposed services, e.g.: Crisis counseling, referrals, conference calling and other proposed services.
- The applicant must indicate the volume of information, crisis counseling, referrals, conference calling and other services proposed.
- The applicant must discuss the anticipated impact and benefit of these services upon runaway and homeless youth and upon the existing network of national and local runaway and homeless youth service providers.
- The applicant must discuss the anticipated results of the various methods which would be employed to promote awareness of the NCS among youth, service providers and the general community.

Approach

Services:

• The applicant must describe the methods that would be used to ensure that the NCS is a neutral and confidential telephone information, referral, and crisis intervention service available to runaway and homeless youth and their families.

• The applicant must describe the proposed communication system and explain how it would operate 24 hours a day, 365 days a year; how it would be staffed using trained (paid and/volunteer) individuals; and its technical capacity to handle at least 250,000 calls each year.

• The applicant must describe its technical capacity to assist other youth-serving agencies in delivering more effective services. This would include maintaining an extensive and current resource listing and the ability to facilitate communication among service providers about specific cases to ensure continuity of services.

• The applicant must describe the approach for maintaining and utilizing trained paid and volunteer individuals who would provide crisis intervention counseling services.

• The applicant must describe its plan for establishing and maintaining service linkages with Federally and non-Federally funded youth service providers and with other hotline services for youth-at-risk for the purpose of making appropriate referrals and facilitating communication between and among service providers.

• The applicant must describe its plans for conducting outreach and public education activities throughout the United States to increase awareness and visibility of the NCS and its services.

• The applicant must discuss potential approaches and plans for minimizing such problems as crank/obscene calls and busy signals.

Adminstration:

• The applicant must describe the procedures that would be used to recruit, train and supervise the staff/volunteers that would receive and manage the telephone calls.

• The applicant must describe the procedures that would be used to ensure adequate telephone coverage with paid staff supervision on a 24-hour, seven-days per week basis.

• The applicant must describe the telephone system that would be used to provide the service, its capabilities and any shortcomings, information such as the number of incoming and outgoing lines, calls conferencing, and service integration with computers.

Staff Background and Organizational Experience

• The applicant must include a brief description of the organization and its related experience since priority for funding will be given to agencies and organizations that have documented experience in providing telephone services to runaway and homeless youth (See Evaluation Criterion 4). Information on the applicant's capability to carry out the proposed project should also be provided.

• The applicant must include a description of current and proposed staff skills and knowledge regarding runaway and homeless youth and indicate how staff would be utilized in achieving the goals and objectives of the program. Information on proposed staff training and brief resumes or job descriptions should be included.

• The applicant must describe procedures for strictly prohibiting the disclosure or transfer of records containing the identity of individual youths to any person or to any public or private agency.

• The applicant must describe the staffing pattern that would be used to ensure that well-trained personnel would be assigned to each shift.

• The applicant must describe how support would be sought to continue the project at the conclusion of the Federal grant period.

Budget Appropriateness

• The applicant must discuss and justify the costs of the proposed project in terms of number of youth that would be served, the types and quantities of services that would be provided, and the anticipated outcomes for the youth.

• The applicant must describe the fiscal control and accounting procedures that would be used to ensure prudent use, proper disbursement, and accurate accounting of the funds received under this program announcement.

• The applicant must describe its plan for taking maximum advantage of private sector resources to enhance the overall program. Such discussion should be over and above the required non-Federal share requirement of this announcement.

Part IV. Application Process

A. Assistance to Prospective Grantees

The Administration on Children, Youth and Families in Washington, D.C. will attempt to respond to any questions about information contained in this announcement (see address at the beginning of this announcement).

B. Application Requirements

To be considered for a grant under this program, applications must be submitted on the forms provided at the end of this announcement (see Part VI, Appendix A of this announcement) and in accordance with the guidance provided herein. The application must be signed by an individual authorized both to act on behalf of the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

All applicants must indicate, in their applications, their willingness to fully cooperate in any data collection and research efforts mandated by the Administration for Children and Families.

If more than one agency is involved in submitting a single application, one entity must be identified as the applicant organization which would have legal responsibility for administering the grant.

C. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Public Law 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements in regulations, including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications by OMB.

D. Notification Under Executive Order 12372

This program is covered under Executive order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the E.O., States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these 16 jurisdictions need take no action regarding E.O. 12372. Applications for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise,

applicants must contact their SPOCs as soon as possible to alert them to the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards.

The SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they must be addressed to: Runaway and Homeless Youth Programs/NCS, Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 200 Independence Avenue, SW., room 341–F.2, Hubert H. Humphrey Building, Washington, DC 20201. Attn: Maiso Bryant.

A list of the Single Points of Contact for each State and Territory is included as Part VI, Appendix B of this announcement.

E. Availability of Forms and Other Materials

A copy of the forms required to be submitted as part of each application for the NCS grant and instructions for completing the application are provided in Part VI, Appendix A. A description of the current NCS as well as a description of the National Clearinghouse on Runway and Homeless Youth are presented in Part VI, Appendices C and D. Addresses of the State Single Points of Contact (SPOCs) to which applicants must submit review copies of their proposals are listed in Part VI, Appendix B.

Legislation referenced in Part I, Section B of this announcement may be found in major public libraries and at the ACF Regional Offices listed in Part VI, Appendix E at the end of this announcement.

Additional copies of this announcement may be obtained from the ACF Regional Offices or by calling the telephone number listed at the beginning of this announcement.

F. Application Consideration

All applications which are complete and conform to the requirements of this program announcement will be subject to a competitive review and evaluation process against the specific criteria outlined in Part II of this announcement. In responding to the criteria, applicants should address the specific Minimum Responsibilities of the Grantee contained in Part III of this announcement. This review will be conducted in Washington, DC by non-Federal experts knowledgeable in the areas of youth development and/or human service programs. All applications will be reviewed as a part of a national competition.

The non-Federal experts will review the applications based on the Evaluation Criteria listed in Part II of this announcement and the specific Minimum Responsibilities of the Grantee contained in Part III of this announcement and will assign a score to each application. The results of the competitive review will be analyzed by Federal staff who, in consultation with ACF Regional officials, will select the application to be recommended for funding to the Commissioner, ACYF.

The Commissioner will make the final selection of the applicant to be funded. As required by the runaway and homeless youth legislation (Section 331), priority for funding will be given to grant applicants that have experience in providing telephone services to runaway and homeless youth.

In addition to the scores assigned by the non-Federal reviewers, the Commissioner also may elect to consider an applicant's past performance in providing services to runaway and homeless youth and may elect not to fund any applicant known to have management, fiscal or other problems which make it unlikely that it would be able to provide effective services.

It is anticipated that the successful applicant will receive notice of a grant award by February 1994. The successful applicant will be notified through the issuance of a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated.

Organizations whose applications will not be funded will be notified of that decision in writing by the Commissioner of ACYF. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

Part V. Application Assembly and Submission

A. Contents of Application

Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424, REV 4–88) (page i).
2. Budget Information (Standard Form 424A, REV 4–88) (pages ii–iii).
3. Budget Justification (Type on standard size plain white paper) (pages iv–v).
4. Assurances—Non-Construction Programs (Standard Form 424B, REV 4–88) (pages ix–x).
5. Certification Regarding Lobbying (page xi).
6. Program Narrative Statement (pages 1 and following; 30 pages maximum, double-spaced). SPECIAL NOTE: APPLICANTS ARE STRONGLY ENCOURAGED TO LIMIT THE PROGRAM NARRATIVE STATEMENT PORTION OF THE APPLICATION TO 30 DOUBLE-SPACED PAGES.
7. Organizational Capability Statement.
8. Supporting Documents (pages SD–1 and following; 10 pages maximum, exclusive of letters of support or agreement).

B. Instructions for Preparing Application Components

1. *Standard Forms 424 and 424A:* Follow the instructions in Part VI, Appendix A. In Item 8 of Form 424, check "New." In Item 10 of the 424, clearly identify the *Catalog of Federal Domestic Assistance* Program Number and Title for the program (# 93.623, Runaway and Homeless Youth Program, National Communication System).

2. *Budget Justification:* Provide breakdowns for major budget categories and justify significant costs. List amounts and sources of all funds, both Federal and non-Federal, that would be used for this project.

3. *Standard Form 424B, Certification Regarding Drug-Free Workplace, Certification Regarding Debarment, and Certification Regarding Lobbying.* Of these forms, only the Standard Form 424B and the Certification Regarding Lobbying need to be signed and returned with the application.

4. *Program Narrative Statement:* The Evaluation Criteria in Part II must be used to organize the Narrative. All of the specifics contained in Part III, Minimum Responsibilities of the Grantee, must be addressed.

5. *Organizational Capability Statement:* Applicants must provide a description (no more than three pages, double-spaced) of how the applicant agency is organized and the types, quantities and costs of services it provides, including services to clients other than runaway and homeless youth. Provide an organizational chart showing any superordinate, parallel, or subordinate agency relationships. Summarize the purposes, clients and overall budgets of these other agencies. If the agency has multiple sites, list these sites. Indicate whether the agency is currently a recipient of funds from the Administration on Children, Youth and Families for services to runaway and homeless youth. Show how the services supported by these funds are or would be integrated with the existing services. Discuss the experience of the applicant organization in providing services to runaway and homeless youth.

6. *Supporting Documentation:* Ten, double-spaced pages is the maximum acceptable for supporting documentation, exclusive of letters of support or agreements. These documents might include resumes, newsclippings, and evidence of the program's efforts to coordinate youth services at the local level. Documentation in excess of the ten-page limit will not be reviewed. Applicants may include as many letters of support or agreement(s) as are appropriate.

C. Application Submission

To be considered for a grant, each applicant must submit one signed original and two additional copies of the grant application, including all attachments, to the application receipt point specified below. The original copy of the application must have original signatures, signed in *black* ink only. Each copy must be stapled (back and front) in the upper left corner. All copies of a single application must be submitted in a single package.

Because each application will be duplicated by the government, applicants should not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, fasten or in any way separate subsections of the application, including supporting documentation.

1. Closing Date for the Receipt of Applications

The closing date for receipt of applications for the grant program contained in this announcement on February 10, 1994.

Applications must be submitted to the following address: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 200 Independence Avenue, SW., room 341–F, Washington, DC 20201. Attn: Maiso Bryant, ACF–94–ACYF/National Communication System. (Hand delivered applications will be accepted during the normal working hours of 9 a.m. to 5:30 p.m., Monday through Friday.)

2. Deadline for Submission of Applications

a. *Deadline.* Applications will be considered as meeting the deadline if they are either:

i. Received on or before the deadline date at the above address, or

ii. Sent on or before the deadline date and received by the granting agency in time for the independent review under DHHS GAM I–62. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service as proof of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.)

b. *Late applications.* Applications which do not meet the criteria stated above are considered late applications. The Administration for Children and Families will notify each late applicant that its application will not be considered in the current competition.

c. *Extension of deadline.* The granting agency may extend the deadline for all applicants because of acts of God such as earthquakes, floods or hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

3. Checklist for a Complete Application

—One original application signed in black ink and dated plus two copies;
—A completed SPOC certification with the date of SPOC contact entered in item 16 on page 1 of SF 424, if applicable.
—SF 424 (The original application must have the word "ORIGINAL" hand printed in bold block letters at the top margin of its SF 424.
—SF 424A;
—Budget Justification;
—SF 424B;
—Certification Regarding Lobbying;
—Program Narrative Statement (maximum of 30 double-spaced pages);
—Organizational Capability Statement (maximum of three pages double-spaced); and
—Supporting Documents (maximum of 10 pages double-spaced).

(Catalog of Federal Domestic Assistance Number 93.623, Runaway and Homeless Youth Program-National Communication System.)

Dated: November 22, 1993.

Joseph A. Mottola,

Acting Commissioner, Administration on Children, Youth and Families.

BILLING CODE 4184–01–M

Appendix A.

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (*give city, county, state, and zip code*):

Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (*specify*):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ - ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Standard Form 424A (4-88)

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)—For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g.)—For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total of each Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is supplied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

OMB Approval No. 0348–0040

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form–LLL "Disclosure Form to Report Lobbying," in accordance with its instruction.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–M

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OM
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

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Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction." provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tire Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions. "without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

BILLING CODE 4184-01-M

U.S. Department of Health and Human Services
Certification Regarding Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may takes action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Appendix B

State Single Points of Contact

Arizona

Mrs. Janice Dunn
Arizona State Clearinghouse
3800 N. Central Avenue
Fourteenth Floor
Phoenix, Arizona 85012
Telephone (602) 280–1315

Arkansas

Ms. Tracie L. Copeland
Manager, State Clearinghouse
Office of Intergovernmental Service
Department of Finance and Administration
P.O. Box 3278
Little Rock, Arkansas 72203
Telephone (501) 682–1074

California

Glenn Stober
Grants Coordinator
Office of Planning and Research
1400 Tenth Street
Sacramento, California 95814
Telephone (916) 323–7480

Colorado

State Single Point of Contact
State Clearinghouse
Division of Local Government
1313 Sherman Street, room 520
Denver, Colorado 80203
Telephone (303) 866–2156

Delaware

Ms. Francine Booth
State Single Point of Contact
Executive Department
Thomas Collins Building
Dover, Delaware 19903
Telephone (302) 736–3326

District of Columbia

Mr. Rodney T. Hallman
State Single Point of Contact
Office of Grants Mgmt and Development
717 14th Street, N.W.
Suite 500
Washington, D.C. 20005
Telephone (202) 727–6551

Florida

Florida State Clearinghouse
Intergovernmental Affairs Policy Unit
Executive Office of the Governor
Office of Planning and Budgeting
The Capitol
Tallahassee, Florida 32399–0001
Telephone (904) 488–8114

Georgia

Mr. Charles H. Badger
Administrator
Georgia State Clearinghouse
254 Washington Street, S.W.
Room 534A
Atlanta, Georgia 30334
Telephone (404) 656–3855

Illinois

Mr. Steve Klokkenga
State Single Point of Contact
Office of the Governor
107 Stratton Building
Springfield, Illinois 62706
Telephone (217) 782–1671

Indiana

Ms. Jean S. Blackwell
Budget Director
State Budget Agency
212 State House
Indianapolis, Indiana 46204
Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann
Division of Community Progress
Iowa Department of Economic Development
200 East Grand Avenue
Des Moines, Iowa 50309
Telephone (515) 281–3725

Kentucky

Mr. Ronald W. Cook
Office of the Governor
Department of Local Government
1024 Capitol Center Drive
Frankfort, Kentucky 40601
Telephone (502) 564–2382

Maine

Ms. Joyce Benson
State Planning Office
State House Station #38
Augusta, Maine 04333
Telephone (207) 289–3261

Maryland

Ms. Mary Abrams
Chief, Maryland State Clearinghouse
Department of State Planning
301 West Preston Street
Baltimore, Maryland 21201–2365
Telephone (301) 225–4490

Massachusetts

Ms. Karen Arone
State Clearinghouse
Executive Office of Communities and Development
100 Cambridge Street, room 1803
Boston, Massachusetts 02202
Telephone (617) 727–7001

Michigan

Mr. Richard S. Pastula
Director
Michigan Department of Commerce
Office of Federal Grants
P.O. Box 30225
Lansing, Michigan 48909
Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette
Clearinghouse Officer
Office of Federal Grant Management and Reporting
Department of Finance and Administration
301 West Pearl Street
Jackson, Mississippi 39203
Telephone (601) 949–2174

Missouri

Ms. Lois Pohl
Federal Assistance Clearinghouse
Office of Administration
P.O. Box 809
Room 430, Truman Building
Jefferson City, Missouri 65102
Telephone (314) 751–4834

Nevada

Department of Administration
State Clearinghouse
Capitol Complex
Carson City, Nevada 89710
ATTN: Mr. Ron Sparks
Clearinghouse Coordinator
Telephone (702) 687–4065

New Hampshire

Mr. Jeffrey H. Taylor
Director
New Hampshire Office of State Planning
Attn: Intergovernmental Review Process, James E. Bieber
2½ Beacon Street
Concord, New Hampshire 03301
Telephone (603) 271–2155

New Jersey

Mr. Gregory W. Adkins, Acting Director
Division of Community Resources
New Jersey Department of Community Affairs
Please direct correspondence and questions to:
Andrew J. Jaskolka, State Review Process
Division of Community Resources
CN 814, Room 609
Trenton, New Jersey 08625–0814
Telephone (609) 292–9025

New Mexico

Mr. George Elliott
Deputy Director
State Budget Division
Room 190, Bataan Memorial Building
Santa Fe, New Mexico 87503
Telephone (505) 827–3640
FAX (505) 827–3006

New York

New York State Clearinghouse
Division of the Budget
State Capitol
Albany, New York 12224
Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director

Office of the Secretary of Admin.
N.C. State Clearinghouse
116 W. Jones Street
Raleigh, North Carolina 27603–8003
Telephone (919) 733–7232

North Dakota

North Dakota Single Point of Contact
Office of Intergovernmental Assistance
Office of Management and Budget
600 East Boulevard Avenue
Bismarck, North Dakota 58505–0170
Telephone (701) 224–2094

Ohio

Mr. Larry Weaver
State Single Point of Contact
State/Federal Funds Coordinator
State Clearinghouse
Office of Budget and Management
30 East Broad Street, 34th Floor
Columbus, Ohio 43266–0411
Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director
Statewide Planning Program
Department of Administration
Division of Planning
265 Melrose Street
Providence, Rhode Island 02907
Telephone (401) 277–2656

Please direct correspondence and questions to:
Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgees
State Single Point of Contact
Grant Services, Office of the Governor
1205 Pendleton Street, Room 477
Columbia, South Carolina 29201
Telephone (803) 734–0494

South Dakota

Ms. Susan Comer
State Clearinghouse Coordinator
Office of the Governor
500 East Capitol
Pierre, South Dakota 57501
Telephone (605) 773–3212

Tennessee

Mr. Charles Brown
State Single Point of Contact
State Planning Office
500 Charlotte Avenue
309 John Sevier Building
Nashville, Tennessee 37219
Telephone (615) 741–1676

Texas

Mr. Thomas Adams
Governor's Office of Budget and Planning
P.O. Box 12428
Austin, Texas 78711
Telephone (512) 463–1778

Utah

Utah State Clearinghouse
Office of Planning and Budget
ATTN: Ms. Carolyn Wright
Room 116 State Capitol
Salt Lake City, Utah 84114
Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director
Office of Policy Research & Coordination
Pavilion Office Building, 109 State Street
Montpelier, Vermont 05602
Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director
Community Development Division
West Virginia Development Office
Building #6, room 553
Charleston, West Virginia 25305
Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey
Federal/State Relations Office
Wisconsin Department of Administration
101 South Webster Street
P.O. Box 7864
Milwaukee, Wisconsin 53707
Telephone (608) 266–0267

Wyoming

Ms. Sheryl Jeffries
State Single Point of Contact
Herachler Building
4th Floor, East Wing
Cheyenne, Wyoming 82002
Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director
Bureau of Budget and Management Research
Office of the Governor
P.O. Box 2950
Agana, Guam 96910
Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact
Planning and Budget Office
Office of the Governor
Saipan, CM
Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose E. Caro
Chairman/Director
Puerto Rico Planning Board
Minillas Government Center
P.O. Box 41119
San Juan, Puerto Rico 00940–9985
Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director
Office of Management and Budget
No. 41 Norregade Emancipation Garden Station
Second Floor
Saint Thomas, Virgin Islands 00802

Please direct correspondence to:
Ms. Linda Clarke
Telephone (809) 774–0750

Appendix C. National Runaway Switchboard

The National Runaway Switchboard:

- Facilitates communication among youth, their families and youth and community-based resources through conference calling services.
- Provides crisis intervention counseling and message delivery services to at-risk youth and their families.
- Provides information and referral services to at-risk youth and their families on youth serving agencies using a computerized national resource directory.
- Conducts an annual conference for local switchboard service providers.

The Switchboard distributes information brochures, posters, a newsletter, and public service announcements. For more information, contact the National Runaway Switchboard, 3080 North Lincoln, Chicago, IL 60657; telephone 1–800–621–4000.

Appendix D. National Clearinghouse on Runaway and Homeless Youth

The Family and Youth Services Bureau (FYSB) established NCRHY in June 1992 in response to the need for a central source of information on runaway and homeless youth and the provision of services to that client population. As a national resource for youth service professionals, policymakers and the general public, NCRHY offers the following specific services:

Through its information line, bibliographic and FYSB program databases and special mailings, NCRHY distributes information about successful program approaches, available resources and current activities relevant to runaway and homeless youth organizations.

NCRHY develops semi-annual briefing packages to inform the field about new developments, ideas and issues related to services to runaway and homeless youth. It also produces informational packets on FYSB programs and reports on critical issues, best practices and model programs.

NCRHY facilitates FYSB-sponsored forums, bringing together experts in the field to discuss critical issues and develop strategies for addressing the causes and consequences of runaway episodes and homelessness.

NCRHY will assist FYSB in collaborating with national, State and local organizations on youth-related policy and program initiatives.

For more information, please contact the National Clearinghouse on Runaway and Homeless Youth, P.O. Box 13505, Silver Spring, Maryland 20911–3505, telephone (301) 608–8098.

Appendix E. Administration for Children and Families Regional Office Youth Contacts

Region I: Sue Rosen, Administration for Children and Families, John F. Kennedy Federal Building, Room 2011, Boston, Massachusetts 02203, (CT, MA, ME, NH, RI, VT), (617) 564–1149

Region II: Estelle Haferling, Administration for Children and Families, 26 Federal Plaza, Room 4149, New York, NY 10278, (NJ, NY, PR, VI), (212) 264–2974

Region III: Nancy Elmore, Administration for Children and Families, 3535 Market Street, P.O. Box 13714, Philadelphia, PA 19101, (DC, DE, MD, PA, VA, WV), (215) 596–0950

Region IV: Viola Brown, Administration for Children and Families, 101 Marietta Tower, Suite 903, Atlanta, GA 30323, (AL, FL, GA, KY, MS, NC, SC, TN), (404) 221–2128

Region V: Kathleen Penak, Administration for Children and Families, 105 West Adams, 23rd Floor, Chicago, IL 60603, (IL, IN, MI, MN, OH, WI), (312) 353–6503

Region VI: Ralph Rogers, Administration for Children and Families, 1200 Main Tower, 20th Floor, Dallas, TX 75202, (AR, LA, NM, OK, TX), (214) 767–6596

Region VII: Lynda Bitner, Administration for Children and Families, Federal Office Building, Room 384, 601 East 12th Street, Kansas City, MO 64106, (IA, KS, MO, NE), (816) 426–5401

Region VIII: Robert Rease, Administration for Children and Families, Federal Office Building, 1961 Stout Street, 9th Floor, Denver, CO 80294, (CO, MT, ND, SD, UT, WY), (303) 844–3106

Region IX: Les Rucker, Administration for Children and Families, 50 United Nations Plaza, San Francisco, CA 94102, (AZ, CA, HI, NV, American Samoa, Guam, Northern Mariana Islands, Marshall Islands, Federated States of Micronesia, Palau), (415) 556–7408

Region X: Steve Ice, Administration for Children and Families, 2201 Sixth Avenue, RX 32, Seattle, WA 98121, (AK, ID, OR, WA), (206) 615–2558

[FR Doc. 93–31461 Filed 12–23–93; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 93G–0017]

Purac America, Inc.; Filing of Petition for Affirmation of Gras Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Purac America, Inc., has filed a petition (GRASP 3G0396), proposing to affirm that ferrous lactate is generally recognized as safe (GRAS) as a color fixative in black olives. FDA also is announcing that the agency is proposing, on its own initiative, to amend the color additive regulations to provide for the safe use of ferrous lactate as a color additive for the coloring of ripe olives.

DATES: Written comments by February 25, 1994.

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: Wes Long, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9519.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (the act) (secs. 201(s) and 409(b)(5) (21 U.S.C. 321(s), and 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), Purac America, Inc., c/o 700 13th St. NW., suite 1200, Washington DC 20005, has filed a petition (GRASP 3G0396), proposing that ferrous lactate be affirmed as GRAS for use as a color fixative in black olives. The agency is aware, however, based upon the information in the petition and elsewhere, that there is a question as to whether ferrous lactate, when used for the petitioned purpose, is functioning as a color fixative or a color additive. The agency's questions about this use are supported by the existing precedent that ferrous gluconate, a similar chemical, is regulated as a color additive under 21 CFR 73.160 for the coloring of ripe olives. Therefore, on FDA's own initiative, in accordance with section 721(b)(4) of the act, (21 U.S.C. 379e(b)(4)), the agency is proposing to amend the color additive regulations in 21 CFR part 73 to provide for the safe use of ferrous lactate for the coloring of ripe olives. The agency recognizes that under section 721(b)(4) of the act, a substance that is listed as GRAS can also be listed as a color additive. In support of its proposed action to list ferrous lactate as a color additive, FDA is relying on the safety data that were submitted in Purac America's GRAS affirmation petition and the safety data currently available in the agency's files. The GRAS affirmation petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 (21 CFR 170.30 and 170.35) is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before February 25, 1994, review the petition and file comments with the Dockets Management Branch (address above). Two copies of any comments should be filed and should be identified with the docket number found in the brackets in the heading of this document. Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use, and whether it should be listed for use as a color additive. In addition, consistent with the regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency encourages public participation by review of and comment on the environmental assessment submitted with the petition that is the subject of this notice. A copy of the petition (including the environmental assessment) and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 14, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–31448 Filed 12–23–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Annual Report of Federal Advisory Committee; Notice of Filing

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committees have been filed with the Library of Congress:

National Advisory Committee on Rural Health

National Advisory Council on Migrant Health

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas

Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Dena S. Puskin, Sc.D. Acting Executive Secretary, National Advisory Committee on Rural Health, room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–0836, and Mr. Antonio E. Duran, Executive Secretary, National Advisory Council on Migrant Health, 7th Floor, 4350 East West Highway, Rockville, Maryland 20857, Telephone (301) 594–4303.

Dated: December 20, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–31440 Filed 12–23–93; 8:45 am]

BILLING CODE 4160–15–P

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of January 1994.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: January 29–February 1, 1994.

Place: Holiday Inn, Palo Verde, 4550 S. Palo Verde Boulevard, Tucson, Arizona, (602) 746–1161.

The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The meeting will begin on Saturday, January 29, at 2 p.m. and adjourn at 5:30 p.m. On Sunday the business meeting will begin at 8 a.m. to 5 p.m. Site visits on Monday will be from 8 a.m. to 5 p.m. and on Tuesday, the meeting will be from 8 a.m. to 12 noon. The agenda will include updates on the Bureau of Primary Health Care, the National Health Service Corps, universal service, mental and dental health, and site visits to: El Rio Neighborhood Health Center, El Pueblo Health Center, La Frontera Mental Health Center, Sells Indian Health Service Hospital, San Xavier Indian Health Service Clinic, United Community Health Center and Mariposa Community Health Center.

The meeting is open to the public, however, no transportation will be provided for the site visits.

Anyone requiring information regarding the subject Council should contact Ms. Nada Schnabel, National Advisory Council on the National Health Service Corps, 8th floor, 4350 East-West Highway, Rockville, Maryland 20857, Telephone (301) 594–4136.

Agenda Items are subject to change as priorities dictate.

Dated: December 20, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–31441 Filed 12–23–93; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–94–4110–03]

Intent To Prepare an Environmental Impact Statement (Greater Wamsutter Area II) for the Proposed Infill Development of the Greater Wamsutter Area (GWA) Located in Carbon and Sweetwater Counties, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) on the proposed infill development of natural gas fields in Carbon and Sweetwater Counties, Wyoming.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as amended, the Bureau of Land Management, Rawlins District Office, will be directing the preparation of an EIS by a third party contractor on the potential impacts of proposed further development in the Greater Wamsutter Area on Federal, State, and private lands.

DATES: Comments on the scoping process will be accepted through January 17, 1994.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Bob Tigner, Team Leader, 1300 3rd Street N, P.O. Box 670, Rawlins, WY 82301.

FOR FURTHER INFORMATION CONTACT: Bob Tigner at the Rawlins District Office, phone number (307) 324-7171.

SUPPLEMENTARY INFORMATION: Union Pacific Resources Company and other operators including Amoco Production Company intend to drill additional natural gas development wells in the Greater Wamsutter Area which includes the Echo Springs, Standard Draw, Coal Gulch, Wild Rose, and Wamsutter Field Areas. It is anticipated that a minimum of 70 additional wells would be drilled within the Standard Draw Field with an additional 250 locations drilled throughout the GWA. The Standard Draw wells would be located on a 320 acre spacing pattern. The gas produced within the analysis area would be transported by existing pipelines, new pipelines, and new gathering lines. The infill development would require the installation of an average ¼ to ½ additional miles of new road per location and a similar amount of additional pipeline.

Dated: December 20, 1993.

Ray Brubaker,

State Director.

[FR Doc. 93–31434 Filed 12–23–93; 8:45 am]

BILLING CODE 4310–22–M

[WY–930–4210–06; WYW 131150]

Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, has filed an application to withdraw 30 acres of public land for national security purposes. The proposed term of the withdrawal is 20 years. This notice closes the land to surface entry and mining for up to 2 years. The land will remain open to mineral leasing.

DATES: Comments must be received on or before March 28, 1994.

ADDRESSES: Comments should be sent to the Wyoming State Director, BLM, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Duane Feick, BLM Wyoming State Office, 307–775–6127.

SUPPLEMENTARY INFORMATION: On December 2, 1993, the Wyoming Army National Guard filed an application for the Department of the Army, Corps of Engineers, to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian

T. 25 N., R. 61 W.,
Sec. 28, N½NW¼NW¼, SW¼NW¼NW¼.

The area described contains 30 acres in Goshen County.

The proposed withdrawal area will be used as a training area and armory site by the Wyoming National Guard. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Wyoming State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested

persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or cancelled, or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, rights-of-way, cooperative agreements, or discretionary land use authorizations of a temporary nature which do not significantly disturb the surface of the land or impair the existing values of the area. Consent from the Army Corp of Engineers will be needed before any use is permitted during the temporary segregation period.

The temporary segregation of the land in connection with this withdrawal application shall not affect the administrative jurisdiction over the land, and segregation shall not have the effect of authorizing any use of the land by the Army Corps of Engineers or Wyoming National Guard.

Dated: December 20, 1993.

Ray Brubaker,

State Director.

[FR Doc. 93–31435 Filed 12–23–93; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

Mississippi River Coordinating Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces the next meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Thursday, January 13, 1994; 6:30 p.m. until 9:30 p.m.

ADDRESS: Minneapolis Convention Center, room 205 A–D, 1301 2nd Avenue South, Minneapolis, Minnesota.

The agenda for the meeting consists of Commission review and discussion of options for a land use management framework to be integrated into the comprehensive management plan for the Mississippi National River and Recreation Area. The discussion continues the Commission's deliberation on public input received on the previously released draft comprehensive management plan and draft environmental impact statement.

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–696, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Superintendent, Mississippi National River and Recreation Area, 175 East Fifth Street, suite 418, St. Paul, Minnesota 55101, (612) 290–4160.

Dated: December 17, 1993.

Francis A. Calabrese,

Acting Regional Director, Midwest Region.

[FR Doc. 93–31489 Filed 12–23–93; 8:45 am]

BILLING CODE 4310–70–P

Sleeping Bear Dunes National Lakeshore Advisory Commission; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Friday, March 18, 1994; 9:30 a.m. until 12 noon.

ADDRESS: Sleeping Bear Dunes National Lakeshore Headquarters, Empire, Michigan.

The agenda for the meeting consists of the Chairman's welcome; minutes of the October 8, 1993, meeting; statement of purpose; public input; update on park activities; old business; new business; public input; next meeting date; adjournment.

The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established by the law that established the Sleeping Bear Dunes National Lakeshore, Public Law 91–479. The purpose of the Commission, according to its charter, is to advise the Secretary of the Interior with respect to matters relating to the administration, protection, and development of the Sleeping Bear Dunes National Lakeshore, including the establishment of zoning by-laws, construction, and administration of scenic roads, procurement of land, condemnation of commercial property, and the preparation and implementation of the land and water use management plan.

FOR FURTHER INFORMATION CONTACT: Ivan Miller, Superintendent, Sleeping Bear Dunes National Lakeshore, 9922 Front Street Empire, Michigan 49630, (616)-326–5134.

Dated: December 17, 1993.

Francis A. Calabrese,

Acting Regional Director, Midwest Region.

[FR Doc. 93–31488 Filed 12–23–93; 8:45 am]

BILLING CODE 4310–70–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Johnnie Davis, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–3 (SUB-NO. 113X), Missouri Pacific Railroad Company—Abandonment Exemption—in Scott County, Missouri (Sikeston Branch). EA available 12/17/93.

Comments on the following assessment are due 30 days after the date of availability:

AB–33 (SUB-NO. 84), Union Pacific Railroad Company—Abandonment—in Sutter County, California. EA available 12/18/93.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–31459 Filed 12–23–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,001]

Dow Chemical Corp., Midland, MI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Dow Chemical Corporation, Midland, Michigan. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29,001; Dow Chemical Corporation, Midland, Michigan (December 10, 1993)

Signed at Washington, DC, this 15th day of December 1993.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 93–31509 Filed 12–23–93; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–28,108, etc.]

Homco International, Inc. A/K/A Weatherford-Petco, et al., Bellaire, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Homco International, Inc., Bellaire, TX and operating at various locations in these states: TA–W–28,108A—Alabama; TA–W–28,108B—Alaska; TA–W–28,108C—California; TA–W–28,108D—Kansas; TA–W–28,108E—Louisiana; TA–W–28,108F—Michigan; TA–W–28,108G—Mississippi; TA–W–28,108H—New Mexico; TA–W–28,108I—Texas and Southern Flow Companies a/k/a Weatherford-Petco (a former division of Homco International, Inc.) operating at various locations in these states: TA–W–28,108J—Louisiana; TA–W–28,108K—Texas; TA–W–28,108L—Mississippi; TA–W–28,108M—Alabama; TA–W–28,108N—Oklahoma.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of Homco International, Inc., headquartered in Bellaire, Texas. The notice was published in the **Federal Register** on March 22, 1993 (58 FR 15384).

The notice was subsequently amended on June 15, 1993 to include the Southern Flow Companies, a division of Homco International operating in Louisiana, Texas, Mississippi, Alabama and Oklahoma. The amended notice was published in the **Federal Register** on June 25, 1993 (58 FR 34482).

At the request of the State Agency, the Department again reviewed the certification for workers of the subject firm. The findings show that Weatherford International purchased Homco International including the Southern Flow Division on April 1, 1993 and reported the claimants' wages under a UI tax account for Weatherford-Petco, a division of Weatherford USA, Weatherford International.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The amended notice applicable to TA–W–28,108 is hereby issued as follows:

"All workers Homco International, Inc., also known as a/k/a Weatherford-Petco and the field operations in the below cited States who were engaged in exploration and drilling who became totally or partially separated from employment on or after November 30, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

TA–W–28,108A—Alabama
TA–W–28,108B—Alaska
TA–W–28,108C—California
TA–W–28,108D—Kansas
TA–W–28,108E—Louisiana
TA–W–28,108F—Michigan
TA–W–28,108G—Mississippi
TA–W–28,108H—New Mexico
TA–W–28,108I—Texas

and

"All workers of Southern Flow Companies (a former division of Homco International, Inc., Bellaire, Texas) a/k/a Weatherford-Petco, and the field operations in the below cited States who were engaged in exploration and drilling who became totally or partially separated from employment on or after November 30, 1991, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

TA–W–28,108J—Louisiana
TA–W–28,108K—Texas
TA–W–28,108L—Mississippi
TA–W–28,108M—Alabama
TA–W–28,108N—Oklahoma

Signed at Washington, DC, this 15th day of December 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–31508 Filed 12–23–93; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,028]

Kaiser Aluminum and Chemical Corp., Trentwood Works, Spokane, Washington; Affirmative Determination Regarding Application for Reconsideration

On November 29, 1993, Locals #338 and 4017 of the United Steelworkers of America requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on October 29, 1993 and was published in the **Federal Register** on November 9, 1993 (58 FR 59491).

The union submitted new information warranting reconsideration.

Conclusion

After careful review of the application, I conclude that the new information 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 13th day of December 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93–31511 Filed 12–23–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,065; TA–W–29,066]

Penetrators, Inc., Midland and Houston, TX; Affirmative Determination Regarding Application for Reconsideration

On December 2nd and 3rd, 1993, the former workers 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 November 4, 1993 and was published in the **Federal Register** on November 29, 1993 (58 FR 62684).

The former workers stated that they did produce an article—crude oil and natural gas, and should be certified eligible to apply for trade adjustment assistance.

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 13th day of December 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93–31510 Filed 12–23–93; 8:45 am]

BILLING CODE 4510–30–M

Farmworker Housing Assistance Program; Availability of Funds for Technical Assistance

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The U.S. Department of Labor, Employment and Training Administration (ETA), announces the availability of funds to provide technical assistance to private nonprofit and public organizations engaged in assisting farmworkers in seeking and securing temporary or permanent housing. This notice describes the application process, how grantees are to be selected and the responsibility of the grantee. As a result of this competitive process, up to six or more grants will be awarded. The total amount available for this effort will be no less than $2,354,486. The grant(s) will be for a 12-month period with the possibility of two option years.

DATES: Applications for grant award(s) will be accepted commencing December 27, 1993. The closing date for receipt of applications shall be February 25, 1994, at 2 p.m. (Eastern Standard Time) at the address below.

ADDRESSES: Mail or hand deliver application to: U.S. Department of Labor, Employment and Training Administration, Office of Grants and Contract Management, Division of Acquisition and Assistance, room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Irene Taylor-Pindle. Reference SGA/DAA–94–002.

FOR FURTHER INFORMATION CONTACT: Ms. Irene Taylor-Pindle, Division of Acquisition and Assistance, Telephone: (202) 219–8702 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This announcement consists of five parts. Part I provides the background and objectives of the Farmworker Housing Assistance Program. Part II identifies allowable housing services. Part III describes the content of the technical proposal and the selection criteria used in reviewing proposals. Part IV describes the application process, and Part V describes the reporting requirements.

Part I—Background

To meet the problems of agriculture related underemployment and unemployment, the Congress has directed the Secretary of Labor to establish employment and training programs specifically for Migrant and Seasonal farmworkers. Under section 402 of the Job Training Partnership Act (JTPA), the Department of Labor (DOL or the Department) provides employment, training and supportive services to eligible migrant and seasonal farmworkers and their families in the conterminous forty-eight (48) States, the State of Hawaii, and the Commonwealth of Puerto Rico.

In accordance with the intent of Congress and JTPA at section 402(c)(3), these services include, but are not limited to classroom training, on-the-job training, work experience, job search assistance, counseling, job development, relocation assistance, training related and non-training related supportive services. Among the inclusive services provided over the years has been farmworker housing assistance.

The Department has awarded 21 grants in Program Year 1993; ranging in size from $36,792 to $291,081 for farmworker housing assistance. Some of the grant recipients have operated farmworker housing assistance programs, while others have served chiefly as facilitating agents—providing technical assistance in the planning, grantsmanship and management of housing operations to agencies and organizations chartered to assist farmworker families with either temporary rental housing or new construction for permanent residency and ownership.

Many of the organizations funded by the Department of Labor provide assistance and services to farmworker communities within their approximate service delivery area, while others serve farmworker communities confined to small residential pockets within and extending over large geographical regions. In some instances, this service area has extended to several contiguous States.

In the past, these grants have been noncompetitively awarded to the same organizations. On February 3, 1993, the Department published a Sources Sought Notice in the **Federal Register** to determine the level of interest and capability in administering a farmworker housing assistance program From a review of the responses (capability statements), the Department has concluded that there is sufficient cause to open this activity up to competition. In addition, the Department plans to reduce the number of grants funded in order to provide better oversight and more efficient administration and management of the program.

In calling for grant applications, the Department is not limiting or suggesting specific geographic regions as service areas for the implementation of a farmworker housing assistance program. In making the award(s), the Department will take into consideration the needs of the eligible migrant and seasonal farmworkers throughout the conterminous forty-eight (48) States, the State of Hawaii, and the Commonwealth of Puerto Rico which may result in the award of up to six grants.

The Department will consider applications from regional consortia or applications that feature subgrant arrangements for specified geographic regions. Inasmuch as some grant applications may contain proposed service areas which overlap the service areas of other prospective grantees, the Department reserves the right to negotiate the proposed service area with each prospective grantee in order to maximize the number of farmworkers to be served.

Organizations are discouraged from competing for more than one geographic area of the country. Preference will be given to those organizations demonstrating prior farmworker housing experience within the proposed service area.

Overall Objectives

As this farmworker housing grant program continues into a new program year, there will be a new emphasis on efficiency, cost effectiveness and measurable outcomes.

Part II—Statement of Work

This Statement of Work sets forth the objectives, general specifications, and conditions for providing farmworker housing assistance during the 12-month Program Year 1994 grant period. The desired activities sought under this solicitation should address all of the following activities and areas of expertise:

A. Farmworker Housing Technical Assistance

—Providing technical assistance to agencies or organizations specifically

chartered to provide local assistance to farmworkers seeking permanent or temporary housing.

—Providing technical assistance and training to agencies and organizations concerning legislative and regulatory changes affecting farmworker housing programs, applications and funding.

B. Farmworker Housing Rehabilitation

—Providing assistance either directly to eligible farmworkers or indirectly to agencies or organizations engaged in the provision of housing services to farmworkers with regard to housing rehabilitation through Community Development Block Grants and other applications; target area identification for program activities; program design for farmworker housing rehabilitation services; assuring farmworker community participation; performing environmental reviews prior to rehabilitation activities; program design and administration.

—Providing assistance with weatherization of farmworker housing; assisting in either conducting outreach, farmworker eligibility certification or training agencies and organization on "how to" engage in the same; providing assistance with actual weatherization, program administration, client identification, the preweatherization process involving applications, work writeups, bid process, contract negotiations, monitoring and fund disbursements.

C. Farmworker Single Family Housing Assistance

—Providing either direct assistance to individuals and communities or indirect assistance through the provision of technical assistance and training regarding the following:

—Preparing Farmers Home Administration (FmHA) 523 applications for self-help technical assistance grants; securing land and recruiting eligible farmworker families; developing housing plans, specifications and cost estimates.

—Providing assistance with regard to site development—including site identification and acquisition, engineering selection, preliminary mapping, zoning and planning reviews, FmHA site review and contractor selection.

—Providing assistance with regard to FmHA 502 Single Family Loans—including outreach and eligibility determination of farmworkers, loan packaging and filing, training on the FmHA review process and finally on the loan award and closing.

—Providing assistance concerning construction (all aspects), ownership and family accounting; and finally local program management.

D. Farmworker Rental Housing Development Assistance

—The provision of assistance either directly to farmworkers or indirectly through training and technical assistance to agencies and organizations chartered to assist farmworkers in developing or obtaining rental housing through FmHA 514, 515 and 516 programs.

—Through the provision of assistance in the following areas related to rental housing: Sponsor development and incorporation, housing survey and market analyses, site identification and property acquisition, architectural selection, preapplication through approval, zoning permits acquisition through the development of management plans, advertising for bids on construction through the loan/mortgage, closing, and rental process.

E. Sewer and Water for Farmworker Housing

—The provision of assistance to agencies and organizations engaged in the development and provision of assistance to farmworkers seeking either temporary or permanent housing as it applies to water and sewer lines.

—The provision of technical assistance in the following associated areas: Project identification, needs assessment, preliminary applications, engineering selection, land acquisition, easement, district formation, design, final applications and letters of conditions, hookup funding, environmental reviews, bidding and contract negotiations, construction, grants management, board training, revenue and budget management and finally operation and maintenance training.

F. Farmworker Housing Counseling

—The grant recipient(s) will engage in training and technical assistance to organizations working with farmworkers, or directly to farmworkers providing counseling concerning the following issues as they apply to home ownership: ownership rights and responsibilities, effects of mortgage payment delinquency and default, preoccupation, referrals for other forms of assistance along with foreclosure assistance.

G. New Housing Program Development

—The grant recipient(s) will provide training to agencies and/or organizations chartered to assist farmworkers obtain housing ownership, or directly to farmworkers with regard to building coalitions that will aid home ownership, researching resources, developing new farmworker housing programs and how to network with other farmworker housing organizations and housing programs for the mutual benefit of all concerned.

In listing these activities, the Department recognizes that all of the activities may not be necessary for a prospective grantee's proposed service area. Accordingly, prospective grantees should include appropriate justification for not including any of these activities in their proposal.

Part III—Contents of Technical Proposal and Rating Criteria

The technical proposal should provide:

1. Technical Capability of Contractor

Documentation of the applicant's capacity to develop a technical approach to accomplish the objectives as enumerated in the Statement of Work.

Should the application represent a consortia of farmworker housing agencies/organizations, or a subgrant arrangement, it should detail the arrangements and include the same information as called for above. Furthermore, the application should expound on how these arrangements will strengthen the overall technical capabilities of the applicant.

Total of 20 Points

2. Administrative Capability

A description of the applicant's qualifications in terms of relevant previous experience, facilities and other resources. Applicants should provide descriptions of at least three prior experiences demonstrating its provision of farmworker housing technical assistance that may illustrate its skills and ability to respond to this solicitation from the Department of Labor. Should the application represent a consortia or a subgrant arrangement, the applicant should describe how the varying program components would be linked together, administered, monitored, and how the applicant would provided oversight and assure that goals are met. The applicant must document its prior experience by providing the Department of Labor with the name(s) and telephone number(s) of

any entity which may have awarded its funds to administer a farmworker housing assistance program. Furthermore, the proposal should include a staffing chart listing names, qualifications and experiences of key staff and the concomitant amount of time each will spend on the project if its less than full-time.

Total of 20 Points

3. Program Design

a. Description of the proposed service area including a rationale for the service area (i.e. local municipality, county(ies) and States) to which housing services for migrant and seasonal farmworkers will be targeted.

b. Description of the main problems relating to farmworker housing in the identified area(s); how the problems have been identified and how the proposed activities will address and resolve them.

c. Description of the housing activities (selected from Part II, above, that the applicant plans to undertake, and the reasons for its selection. The applicant should relate each proposed activity to the problems affecting farmworkers in the identified geographic areas within the proposed overall service area.

For each activity identified, a set of measurable (in quantifiable terms) goals for each quarter within the program year (funding period) should be defined by the applicant. This will be considered by the Department at the time of grant negotiation and incorporated into grant award documents. The applicant should include in this section an itemized annual budget indicating personnel and all other administrative costs to be charged to the grant. It should be noted that proposed expenditures must be consistent with and fully supported by the proposed housing activities.

Total of 50 Points

4. Linkages & Coordination

A description of any and all linkages that the applicant (be it a single applicant, a consortia or an applicant with subgrant arrangements) has established within the identified service area that will ensure a greater degree of success of the farmworker housing assistance activities. The applicant should identify and demonstrate (including letters of support) linkages with farmworker organizations and JTPA, section 402, employment and training recipients and effected farmworker communities, and any organizations chartered to provide services and assistance to farmworkers in the designated service area of the proposed housing assistance program. Additionally, the applicant should describe how these linkages will benefit the program.

Total of 10 Points

Applicants are advised that discussions may be necessary in order to clarify any inconsistencies in their applications, as well as to negotiate proposed service areas. Applications may be rejected where the information required is not provided in sufficient detail to permit adequate assessment of the proposal.

The final decision on the award(s) will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer. This determination will include an assessment of the need for farmworkers assistance in seeking and securing both temporary and permanent housing throughout the conterminous forty-eight (48) States, the State of Hawaii, and the Commonwealth of Puerto Rico.

Part IV—Application Process

A. Eligible Applicants

Eligible applicants for these funds under this announcement include public organizations and private nonprofit organizations authorized by their charter or articles of incorporation to provide housing assistance services to the migrant and seasonal farmworker community.

B. Application Procedures

1. Submission of Proposal

All instructions and forms required for submittal of applications are included in this announcement. An original and three (3) copies of the application shall be submitted.

The application package shall consist of two (2) separate and distinct parts. Part I, The Financial Proposal and Part II, the Technical Proposal. The Financial Proposal, Part I, shall contain the SF–424, "Application for Federal Assistance" (Attachment No. 1) and SF424–A, "Budget" (Attachment No. 2). The budget shall include on a separate page(s) a cost analysis of the budget, identifying in detail the amount of each budget line item attributable to each cost category.

The technical proposal, Part II, shall demonstrate the applicant's capability to provide the services as outlined in this announcement. Applicants should describe the proposed technical approach including phasing of tasks and scheduling of time and personnel. Under Part III (3)(c), we request the submission of a budget to accompany the technical proposal.

No cost data or reference to price shall be included in the technical proposal so that an independent evaluation may be made on the basis of technical merit.

2. Late Proposals

Any proposal not reaching the designated place, by the specified time and date of the delivery requirements will not be considered, unless postmarked five (5) days prior to the closing date. The term "Postmark" means a printed, stamped or otherwise placed impression (exclusive of ion) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employers of the U.S. Postal Service.

3. Hard-delivered Proposals

It is preferred that proposals be mailed five days prior to the closing date. However, hand-delivered proposals must be received by 2 p.m., Eastern Standard Time on February 25, 1994. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

4. Period of Performance

The period of performance will be 12 months beginning July 1, 1994, and continuing through June 30, 1995.

5. Option to Extend

Based on the grantee successfully completing work under this solicitation, the availability of funds, and the needs of the Department, this grant may be extended for up to three additional years.

C. Level of Effort

The total amount available for this solicitation will be no less than $2,354.486. This amount may be used for up to six grants which the Department will award under this solicitation (see Part I, Background).

D. Reports/Deliverables

Recipients of grants under this solicitation will be required to submit the following reports at the time and in the number of copies specified, to the Division of Seasonal Farmworker Programs, Office of Special Targeted Programs, Employment and Training Administration, U.S. Department of Labor.

1. Quarterly Reports (3 Copies)

The first such report will be due 30 days after the first three months of program operation, and should reflect program activities and financial outlays. The reports will record and measure

agreed upon activities in quantifiable terms—thus allowing for a basis to determine success.

Subsequent reports will be due on a quarterly basis and will follow the format and content of the first such report. Additional and more specific items and forms will be shared at the time of grant negotiations.

2. Final/Annual Status Report (3 Copies)

The Grant Recipient will submit a final report summarizing the activities performed under this grant within 30 days of the end of the first year of program activities.

Signed at Washington, DC, this 20th day of December 1993.

James C. Deluca,

Grant Officer, ETA.

[FR Doc. 93–31478 Filed 12–23–93; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from tine to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

	Dec. 27, 1993
VOLUME II:	
Missouri	MO930042
Missouri	MO930043
Missouri	MO930044
Missouri	MO930045
VOLUME III:	
Alaska	AK930005
Alaska	AK930006
Alaska	AK930007
Alaska	AK930008
Alaska	AK930009

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

	Date of publication
VOLUME I:	
New Jersey	NJ930002 (February 19, 1993).
Tennessee	TN930005 (February 19, 1993).
VOLUME II:	
Arkansas	AR930001 (February 19, 1993).
Iowa	IA930032 (October 29, 1993).
Illinois	IL930001 (February 19, 1993).
Indiana	IN930001 (February 19, 1993).
Indiana	IN930002 (February 19, 1993).
Indiana	IN930004 (February 19, 1993).
Indiana	IN930006 (February 19, 1993).
Indiana	IN930017 (February 19, 1993).
Indiana	IN930020 (October 1, 1993).
VOLUME III:	
Alaska	AK930001 (February 19, 1993).
California	CA930001 (February 19, 1993).
California	CA930002 (February 19, 1993).
California	CA930004 (February 19, 1993).
California	CA930027 (August 20, 1993).
Colorado	CO930003 (February 19, 1993).
Colorado	CO930004 (February 19, 1993).
Colorado	CO930008 (February 19, 1993).
Colorado	CO930009 (February 19, 1993).
Colorado	CO930021 (October 1, 1993).

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 17th day of December 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–31215 Filed 12–23–93; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

Houston Lighting & Power Co., City Public Service Board of San Antonio, Central Power and Light Co., City of Austin, TX (South Texas Project, Unit Nos. 1 and 2); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–76 and NPF–80, issued to the Houston Lighting & Power Company, et al. (the licensee), for operation of the South Texas Project, Unit Nos. 1 and 2, located in Matagorda County, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would consist of revisions to 10 CFR part 20 references to recognize the new section numbers, revise definitions to ensure consistency with 10 CFR part 20, and change administrative controls for reporting and recordkeeping to maintain compliance with the new part 20. The change would revise the limitations on concentrations of radioactive material released in liquid effluents and the limitations on the dose rate resulting from radioactive material released in gaseous effluents and reflect the relocation of the prior 10 CFR 20.106 requirements to the new 10 CFR 20.1302. These changes are in response to the licensee's application for amendments dated September 15, 1993, as supplemented by letter dated November 30, 1993.

The Need for the Proposed Action

The proposed action is needed in order to retain operational flexibility consistent with 10 CFR part 50, appendix I, concurrent with the implementation of the revised 10 CFR part 20.

Environmental Impacts of the Proposed Action

The proposed revision, in regards to the actual release rates as referenced in the Technical Specifications (TS) as a dose rate to the maximally exposed member of the public, will not increase the types or amounts of effluents that may be released offsite, nor increase individual or cumulative occupational radiation exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments.

With regard to potential nonradiological impacts, the proposed changes do not affect nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed amendments to the TS, any alternative to the amendments will have either no significantly different environmental impact or will have greater environmental impact. The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts as a result of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to the operation of the South Texas Project, Units 1 and 2, dated August 1986.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated September 15, 1993, as supplemented by letter dated November 30, 1993, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Dated at Rockville, Maryland, this 17th day of December 1993.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Director, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–31437 Filed 12–23–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–142]

Environmental Assessment and Finding of No Significant Impact Regarding Release of Facility for Unrestricted Use; University of California, Los Angeles Research Reactor Facility

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an order releasing for unrestricted use in the University of California (UCLA) Research Reactor Facility (UCLA facility) located in Los Angeles, California, in accordance with NRC guidelines and a Settlement Agreement dated September 30, 1985, between the Regents of the University of California, the Campus Committee to Bridge the Gap, and the NRC staff. An order was issued by the Atomic Safety and Licensing Board on November 8, 1985, that approved the Settlement Agreement.

Environmental Assessment

Identification of Proposed Action

By application dated October 29, 1985, as supplemented, UCLA requested authorization for Phase I dismantlement of the UCLA reactor facility and disposal of its component parts in accordance with the proposed Phase I decommissioning plan. Following an order authorizing Phase I dismantling of the UCLA facility and disposition of component parts dated July 14, 1986, UCLA completed Phase I dismantlement. Phase I concerned the removal of all UCLA facility components except for the concrete building structure, concrete biological shield, components affixed to or embedded in the biological shield, the holdup tank, primary water pump, sump pump, compressor system, floor drains, decontamination sinks, and fuel storage pits. Phase I of decommissioning was completed on August 18, 1989.

By application dated June 10, 1988, as supplemented, UCLA requested authorization for Phase II dismantlement of the UCLA facility and disposal of its component parts in accordance with the proposed Phase II decommissioning plan. Following an order authorizing Phase II dismantling of the UCLA facility and disposition of component parts dated July 28, 1989, UCLA completed Phase II dismantlement. Phase II decommissioning concerned the removal of components that remained after completion of Phase I decommissioning. When Phase II decommissioning was completed, UCLA submitted final survey information on January 4 and 28 and February 22, 1993, as a basis for release of the UCLA facility for unrestricted use.

On March 10 and 11, 1993, representatives from the Oak Ridge Institute for Science and Education (ORISE) performed an independent confirmatory survey at the UCLA facility. The survey is documented in an ORISE report, "Confirmatory Survey of the Boelter Reactor Facility, University of California at Los Angeles, California," dated August 1993. NRC Region V, in a memorandum dated September 8, 1993, found that the ORISE report findings support the data developed in the UCLA final survey report.

The Need for Proposed Action

This action is needed to release the UCLA facility for unrestricted access and use.

Environmental Impact of Release of the Facility for Unrestricted Use

UCLA indicates that the residual contamination and dose exposures comply with the criteria of Regulatory Guide 1.86, Table 1, which establishes acceptable residual surface contamination levels, and the exposure limit, established by the NRC staff, of less than 5 micro R/hr above background at 1 meter. The NRC has verified these measurements. The NRC finds that since these criteria have been met, there is no significant impact on the environment and the UCLA facility can be released for unrestricted use.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts and would deny release of the site for unrestricted use. The environmental impacts of the proposed action and the alternative action are similar. Because the reactor and component parts have been dismantled and disposed of in accordance with NRC regulations and guidelines and the Settlement Agreement, there is no alternative to release of the UCLA facility for unrestricted use.

Agencies and Persons Consulted

Personnel from the ORISE conducted an independent confirmatory survey at the UCLA facility under an interagency agreement. The staff consulted with the State of California regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The NRC has determined not to prepare an environmental impact statement for the proposed action. On the basis of the foregoing Environmental Assessment, the NRC has concluded that the issuance of the Order will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the final survey for the UCLA facility dated January 4 and 28 and February 22, 1993. These documents are available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 20th day of December 1993.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–31436 Filed 12–23–93; 8:45 am]

BILLING CODE 7590–01–M

PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT

Meetings

AGENCY: President's Council on Sustainable Development.

ACTION: Meeting notice.

DATES/TIME:

January 13, 1993

9 a.m.–12 Noon—Sustainable Communities

2 p.m.–5:30 p.m.—Principles, Goals, and Definition

January 14, 1995

9 a.m.–1 p.m.—Eco-Efficiency

PLACE: The Westin Hotel, 1900 Fifth Avenue, Seattle, Washington 98101.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The President's Council on Sustainable Development is a partnership of industry, labor, government, environmental organizations, not-for-profit groups, and civil rights organizations.

The Council will participate in a roundtable discussion and public forum on sustainable communities; participate in the Eco-Efficiency Task Force roundtable discussion; consider draft principles from the Council's Task Force on Principles, Goals, and Definitions; and consider recommendations from the Council's Scoping Task Force on Climate Change.

CONTACT: Eunice Lockhart-Moss, Special Assistant to the Executive Director, President's Council on Sustainable Development (202) 208–7411.

Molly H. Olson,

Executive Director, President's Council on Sustainable Development.

[FR Doc. 93–31457 Filed 12–23–93; 8:45 am]

BILLING CODE 3127–01–M

POSTAL RATE COMMISSION

[Order No. 997; Docket No. A94–4]

Before Commissioners: W.H. "Trey" LeBlanc, III, Vice Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

In the Matter of: Boone, NE 68625: (Chris Christensen, Petitioner).

NOTICE AND ORDER ACCEPTING APPEAL AND ESTABLISHING PROCEDURAL SCHEDULE

Issued December 20, 1993.

Docket Number: A94–4.

Name of Affected Post Office: Boone, Nebraska 68625.

Name(s) of Petitioner(s): Chris Christensen.

Type of Determination: Closing.

Date of Filing of Appeal Papers: December 16, 1993.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the December 16, 1993 filing date of this appeal (39 U.S.C. 404(b)(5)). In the interest of expedition and in light of the 120-day decision schedule, the Commission reserves the right to request the Postal Service to submit memoranda of law on any appropriate issue. If requested, the memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioner. The Commission reserves the right to ask the petitioner for more information.

If the Postal Service files a brief or motion to dismiss or a motion to affirm the appeal, the Postal Service may incorporate by reference any memoranda it previously filed in this docket.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by January 3, 1994.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedure Schedule in the **Federal Register**.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

December 16, 1993, Filing of Appeal letter.

December 20, 1993, Commission Notice and Order of Filing of Appeal.

January 10, 1994, Last day for filing of petitions to intervene [see 39 CFR 3001.111(b)].

January 20, 1994, Petitioner's Participant Statement or Initial Brief (Any person who has sent the Commission an appeal letter may file a Participant Statement or Initial Brief.) [see 39 CFR 3001.115(a) and (b)].

February 9, 1994, Postal Service's Answering Brief [see 39 CFR 3001.115(c)].

February 24, 1994, Petitioner's Reply Brief should Petitioner choose to file one [see 39 CFR 3001.115(d)].

March 3, 1994, Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116].

April 14, 1994, Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. 404(b)(5)].

[FR Doc. 93–31425 Filed 12–23–93; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—John J. Lane (202) 272–3900.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information, and Consumer Services, Washington, DC 20549.

New

Mutual Funds Focus Group File No. 270–386

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval a request to conduct two focus group sessions of ten individuals each, for a total of 20 participants, to obtain information regarding the public's understanding of the risks involved when purchasing mutual funds from a bank. The results will be used by the agency to get a sense from the public on their understanding of the level of risk involved when purchasing mutual funds sold through banks. The focus group sessions are estimated to require .20 burden hours per response.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: December 15, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–31495 Filed 12–23–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and To Withdraw Unlisted Privileges in an Over-the-Counter Issue

December 20, 1993.

On December 9, 1993, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–11716	GATE	Gateway 2000 Inc.; Common Stock; $.01 par value.

The above-referenced issue is being applied for as a replacement for the following security, which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issue:

File No.	Symbol	Issuer
7–11717	IMNR	Immune Response Corp.; Common Stock; $.0025 par value.

A replacement issue is being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before January 10, 1994, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant

of UTP as well as the withdrawal of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–31797 Filed 12–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33357; File No. SR–NASD–93–72]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the Guidelines Regarding Communications With the Public About Collateralized Mortgage Obligations (CMOs)

December 17, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 3, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one constituting a stated policy, practice or interpretation of an existing rule of the NASD under section 19(b)(3)(A)(i) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend its Guidelines Regarding Communications With the Public About Collateralized Mortgage Obligations ("CMOs") at Article III, Section 35 of the Rules of Fair Practice ("CMO Guidelines") to require members to offer educational material on CMOs to their customers. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Guidelines Regarding Communications With the Public About Collateralized Mortgage Obligations (CMOs)

* * * * *

Educational Material

In order to ensure that customers are adequately informed about CMOs members *are required to* [should] offer to customers educational material which covers the following matters:

- A discussion of CMO characteristics as investments and their attendant risks
- An explanation of the structure of a CMO, including the various types of tranches
- A discussion of mortgage loans and mortgage securities
- Features of CMOs, including: credit quality, prepayment rates and average lives, interest rates (including effect on values and prepayment rates), tax considerations, minimum investments, transactions costs and liquidity
- Questions an investor should ask before investing, and a glossary of terms that may be helpful to an investor considering an investment.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In rule filing SR–NASD–93–63, which was effective upon filing with the Securities and Exchange Commission on November 3, 1993,[1] the NASD amended the CMO Guidelines to state that members should offer educational material concerning CMOs to their customers. A more complete description of the nature of the educational material provision may be found in that rule filing.

Subsequent to the filing of SR–NASD–93–63, the NASD's Office of General Counsel determined that the provision stating that members "should" offer educational material to their customers was intended to be mandatory as approved by the NASD Board of Governors on September 20, 1993. Accordingly, the NASD is amending the Guidelines to state that members are required to offer to customers educational material concerning CMOs.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act in that the amendment to the Guidelines relating to educational material will enhance public knowledge and information on a complex securities product and will, therefore, enhance the protection of investors and the public interest by improving the baseline of standards to guide sales practices relating to CMOs.

(B) Self-Regulatory Organization's Statement on Burden on Completion

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing with the Commission pursuant to section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it constitutes a stated policy, practice or interpretation of an existing rule of the NASD.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing.

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[1] Securities Exchange Act Release No. 33169 (Nov. 9, 1993), 58 FR 60742 (Nov. 16, 1993).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 13, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–31496 Filed 12–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19960; 812–8728]

Comerica Bank, et al.; Conditional Temporary Order and Notice of Application

December 17, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Conditional temporary order and notice of application for permanent order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Comerica Bank ("Comerica") and Woodbridge Capital Management, Inc. ("Woodbridge").

RELEVANT ACT SECTIONS: Conditional temporary order granted, and permanent order requested, under section 9(c) for an exemption from the provisions of section 9(a).

SUMMARY OF APPLICATION: Applicants seek a permanent order under section 9(c) of the Act exempting them from the disqualification provisions of section 9(a) solely with respect to a securities-related injunction entered against Comerica, and a temporary order pending the Commission's determination with respect to the permanent order. Applicants request that any relief granted pursuant to the application also apply to any other entity that is or may become an affiliated person of applicants.

FILING DATE: The application was filed on December 17, 1993.

HEARING OR NOTIFICATION OF HEARING: Interested persons may request a hearing on the application by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 11, 1994, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, Comerica, One Detroit Center, Detroit, Michigan 48275–3391. Woodbridge, 100 Renaissance Center, Detroit, Michigan 48243.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Senior Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Comerica is a Michigan state-chartered bank that is a member of the Federal Reserve System. Comerica is a wholly-owned subsidiary of Comerica Incorporated, a bank holding company.

2. Woodbridge is a wholly-owned subsidiary of Comerica Investment Services, Inc., which in turn is a wholly-owned subsidiary of Comerica. Woodbridge is an investment adviser registered under the Investment Advisers Act of 1940. Woodbridge serves as investment adviser to the Ambassador Family of Mutual Funds (which currently includes twelve stock, bond, and money market funds); the Peoples S&P MidCap Index Fund, Inc.; SEI Index Funds; SEI Tax Exempt Trust; and St. Clair Fixed Income Fund, Inc. (collectively, the "Funds"). The Funds are open-end management investment companies registered under the Act.

3. Wilson, Kemp & Associates, Inc. ("Wilson") is a wholly-owned subsidiary of Comerica Investment Services, Inc., which in turn is a wholly-owned subsidiary of Comerica. Wilson is an investment adviser registered under the Investment Advisers Act of 1940. Wilson is not presently an investment adviser to any investment company registered under the Act.

4. On December 17, 1993, the Commission filed a complaint in the United States District Court for the Southern District of New York in a civil action entitled *Securities and Exchange Commission* v. *Comerica Bank* (the "SEC Action"). The complaint alleged that Comerica violated Regulation U, as promulgated by the Board of Governors of the Federal Reserve System under section 7(d) of the Securities Exchange Act of 1934, in connection with extensions of credit in a custodial trust account maintained for an individual named Mark Sendo.[1]

5. On the same day, Comerica consented to the entry of a Final Judgment of Permanent Injunction and Other Relief (the "Final Judgment"), without admitting or denying any of the allegations in the Commission's complaint except as to jurisdiction. The Final Judgment enjoins Comerica from further violations of Regulation U. The Final Judgment requires Comerica to pay a civil money penalty of $100,000. The Final Judgment also requires Comerica to adopt internal procedures designed to prevent a recurrence of the violative conduct.

6. Applicants have advised the directors of the Peoples S&P MidCap Index Fund, Inc., and the trustees of the SEI Index Funds and SEI Tax Exempt Trust of the circumstances pertinent to the Final Judgment and the actions taken by applicants to obtain temporary and permanent orders exempting applicants from the provisions of section 9(a). Applicants will promptly advise the Division of Investment Management of any action taken by the respective directors and trustees of those funds with regard to applicants. In addition, applicants have been advised by the trustees of the Ambassador Funds and the directors of the St. Clair Fixed Income Fund, Inc. (the "Boards") that (a) the Boards have reviewed the circumstances pertinent to the Final Judgment, and have considered the prior services rendered to the funds by Woodbridge; and (b) after review and consideration of such factors as they

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[1] The Commission brought an action against Sendo and two of his associates for "free-riding"—paying for purchases of securities with anticipated proceeds from offsetting sales of the same securities—in violation of the antifraud and margin provisions of the federal securities laws in June 1991. *SEC* v. *Sendo, Burman and Tringale,* 91 Civ. 4408 (S.D.N.Y.), Litigation Release No. 12894 (June 27, 1991). Summary judgment was rendered in favor of the Commission in October 1992. Litigation Release No. 13475 (Dec. 17, 1992).

deemed appropriate, the Boards, including a majority of the non-interested trustees of the Ambassador Funds, and a majority of the non-interested directors of the St. Clair Fixed Income Fund, Inc., have determined that the retention of Woodbridge as investment adviser is in the best interests of the funds' shareholders.[2]

7. In making the application, applicants acknowledge, understand, and agree that the application and any temporary exemption issued by the Commission shall be without prejudice to the Commission's consideration of any application for exemptions from statutory requirements, including the consideration of the instant application for a permanent exemption pursuant to section 9(c) or the revocation or removal of any temporary exemption granted in connection with the application.

Applicants' Legal Analysis

1. Applicants seek a permanent order exempting applicants and their affiliates from the provisions of section 9(a) of the Act solely with respect to the Final Judgment, and a temporary order pending the Commission's determination with respect to the permanent order.

2. Section 9(a) of the Act, in pertinent part, disqualifies any person or company from serving or acting in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor or any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company if such person, or an affiliated person of such person, has, by reason of misconduct, been permanently or temporarily enjoined by an order, judgment, or decree from any court of competent jurisdiction from acting as an underwriter, broker, dealer, or investment adviser, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.

3. Section 9(c) provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe or that the conduct of the applicant has been such as not to make it against the public interest or protection of investors to grant such application.

4. As a result of the Final Judgment, Comerica and its affiliated persons are subject to the disqualification provisions of section 9(a). Applicants assert that the application of such provisions to applicants is unduly and disproportionately severe. Applicants further assert that the public interest and protection of investors favors granting the requested relief.

5. Applicants state that the conduct that gave rise to the Final Judgment was not in any way related to activities of applicants as investment advisers.

6. Woodbridge states that it is not a party to the SEC Action and is not alleged to have involved in any way with the activities that form the basis of that action. None of the officers or employees of Woodbridge participated in any way in the conduct alleged to have constituted the violations which resulted in the SEC Action.

7. Applicants assert that senior management of Comerica and Comerica Incorporated were not involved with, and had no knowledge of, the conduct alleged to have constituted the violations which form the basis of the SEC Action. Moreover, the SEC Action does not involve allegations of fraud.

8. Applicants assert that denial of the requested order would harm the Funds' investors because the investors would lose the services of the Funds' investment adviser. In addition, investors would be harmed by the uncertainty caused by Woodbridge being prohibited from serving as investment adviser to the Funds, which may cause, among other things, multiple redemptions of shares of the Funds.

9. Applicants state that none of applicants, Wilson, Comerica Investment Services, Inc., nor Comerica Incorporated have been the subject of prior Commission enforcement proceedings. Applicants further state that they have not previously filed an application for relief pursuant to section 9(c) of the Act.

10. Applicants state that Comerica has adopted policies and procedures to ensure that the alleged violations do not recur. In addition, pursuant to the Final Judgment, Comerica has taken or will take the following steps to remedy its conduct and prevent the recurrence of violations:

a. Comerica will maintain policies and procedures to ensure that it complies with Regulation U, including policies to ensure that purchases of securities in custodial accounts are not paid for with proceeds from sales of the same securities in the accounts.

b. Within thirty days after the entry of the Final Judgement, Comerica will retain an independent consultant who will review Comerica's custodial securities clearing operations and will make such recommendations as are necessary with respect to Comerica's policies and procedures to ensure that Comerica complies with Regulation U.

c. The consultant will issue a report within sixty days of its retention setting forth its findings and recommendations and will forward the report to the New York Regional Office. Unless the Commission objects to the consultant's recommendations within thirty days, Comerica will implement the consultant's recommendations by no later than forty days after the end of the period for the Commission to object.

Applicants' Condition

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the condition that Comerica will comply with the Final Judgment.

Temporary Order

The Commission has considered the matter and, without necessarily agreeing with all the facts represented or all of the arguments asserted by applicants, finds that the issuance of a temporary order under section 9(c) of the Act, subject to the foregoing condition, is not inconsistent with the public interest or the protection of investors.

Accordingly, it is hereby ordered, under section 9(c) of the Act, that applicants and their affiliated persons be, and hereby are, granted a temporary exemption from the provisions of section 9(a) of the Act solely with respect to the Final Judgment, subject to the condition is expressly incorporated herein, pending the Commission's determination with respect to the permanent order.

By the Commission.

[FR Doc. 93-31420 Filed 12-23-93; 8:45 am]

BILLING CODE 8010-01-M

[2] The Division of Investment Management notes that the Ambassador Family of Mutual Funds and the St. Clair Fixed Income Fund, Inc., whose Boards approved the retention of Woodbridge as investment adviser, are sponsored by Comerica. In contrast, The Peoples S&P MidCap Index Fund, Inc., SEI Index Funds, and SEI Tax Exempt Trust, whose trustees and directors were advised of the circumstances pertinent to the Final Judgment and the application, are not sponsored by Comerica.

[Investment Company Act of 1940; Release No. IC–19967; File No. 812–8730]

First Investors Corporation, et al.; Temporary Order and Notice of Application

December 20, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Temporary order and notice of application for permanent exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: First Investors Corporation, First Investors Management Company, Inc., Executive Investors Corporation, Executive Investors Management Company, Inc., and First Investors Life Insurance Company (the "Corporate Applicants"), and David D. Grayson and Glenn O. Head (the "Individual Applicants").

RELEVANT ACT SECTIONS: Conditional temporary order granted and permanent order requested under section 9(c) granting an exemption from section 9(a).

SUMMARY OF APPLICATION: Applicants have been granted a conditional temporary order, and have requested a permanent order under section 9(c) exempting them from section 9(a) solely with respect to injunctions entered by courts in the States of Maine and New York and the Commonwealths of Massachusetts and Virginia on December 20, 1993 (the "Injunctions").

FILING DATE: The application was filed on December 20, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 20, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants 95 Wall Street, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. First Investors Corporation ("FIC") is a registered broker-dealer that serves as the underwriter for thirteen registered investment companies, including First Investors Fund For Income, Inc. ("FIFI") and First Investors High Yield Fund, Inc. ("FIHY"). FIC also serves as underwriter for other financial products within the First Investors complex, including certain single payment and periodic payment plans and two separate accounts established and maintained by an insurance company.

2. First Investors Management Company Inc. ("FIMCO") is a registered investment adviser that serves as the investment adviser for each of the funds for which FIC acts as underwriter, plus First Investors Special Bond Fund, Inc.

3. Executive Investors Corporation ("EIC") is a registered broker-dealer that serves as the underwriter for each of the three series of Executive Investors Trust, a registered management investment company. Executive Investors Management Company, Inc. ("EIMCO") is a registered investment adviser that serves as the investment adviser for Executive Investors Trust.

4. First Investors Life Insurance Company ("First Investors Life") is a stock life insurance company incorporated under the laws of the State of New York. First Investors Life serves as sponsor or depositor for several registered unit investment trusts. Shares of these unit investment trusts are sold exclusively through FIC.

5. All of the registered management investment companies and the unit investment trusts described above are collectively referred to herein as the "First Investors Investment Companies."

6. FIC, FIMCO, EIC, EIMCO, and First Investors Life are wholly-owned subsidiaries of First Investors Consolidated Corporation ("FICON"). FICON is a closely-held corporation of which David D. Grayson and Glenn O. Head each own or control approximately 34% of the outstanding shares.

7. Grayson serves as president and a director of EIMCO and FIMCO, and as a director of FIC, EIC, and First Investors Life. In addition, Grayson is the president and a trustee of all of the First Investors Investment Companies. Grayson also served as president of FIC and EIC until the settlement of certain state actions, as further discussed below (the "Settlement").

8. Head serves as an executive officer and a director of FIMCO, First Investors Life, and EIMCO. Head also serves as the treasurer and a director of FIC and EIC. In addition, Head is vice-president and a trustee of all of the First Investors Investment Companies. Head also served as an executive officer of FIC and EIC until the Settlement.

9. Howard A. Froman and Alvin Blumenfeld each held the title of senior vice-president for sales at FIC and were co-heads of one of FIC's sales complexes until the Settlement. Louis Woolf is a registered representative at FIC.

10. FIC, FIMCO, FICON, FIFI, FIHY, the Individual Applicants, Froman, and Blumenfeld (the "Respondents") are subject to administrative and civil actions in the States of Maine, New York, and Washington and the Commonwealths of Massachusetts and Virginia (collectively the "States"). Woolf is subject to an action brought in Massachusetts. Each of the States alleged that the Respondents, and Woolf in regard to the action brought by the Commonwealth of Massachusetts, among other things, (a) Failed to supervise adequately their registered representatives, or to establish adequate procedures to do so, with the result that those representatives did not always disclose the risks associated with FIFI and FIHY and at times recommended purchases of FIFI and FIHY that were unsuitable for the objectives and goals of certain investors, (b) provided investors with prospectuses that did not disclose all of the risks associated with FIFI and FIHY, and (c) in some cases, failed to make timely delivery of prospectuses for FIFI and FIHY.

11. The Respondents entered into separate settlement agreements jointly negotiated with the States of Maine and New York, and the Commonwealth of Virginia on October 13, 1993 (the "Settlement Agreement") and the Respondents and Woolf entered into a settlement agreement with the Commonwealth of Massachusetts on October 13, 1993 (the "Massachusetts Agreement"). (Collectively, the Settlement Agreement and the Massachusetts Agreement are referred to herein as the "Agreements.") The Agreements provide, among other things, for the full and final settlement and dismissal of the administrative and civil actions initiated by the States relating to the offer and sale of shares of FIFI and FIHY. As a result of the Agreements, no pending enforcement actions exist in any states against the Respondents and Woolf.

12. Pursuant to the Settlement Agreement, each Respondent was enjoined by courts in Maine, New York, and Virginia on December 20, 1993.[1] Pursuant to the Massachusetts Agreement, each Respondent and Woolf was enjoined by a court in Massachusetts on December 20, 1993.[2] Respondents and Woolf were enjoined from engaging in fraudulent practices relating to the offer or sale of securities to the public. In addition, the Respondents agreed to establish, or continue, various compliance and risk disclosure procedures. Further, FICON agreed to pay an additional sum of $7.5 million to the $24.7 million disgorgement fund available for distribution to defrauded investors of FIFI and FIHY.[3]

13. Under the Agreements, the Individual Applicants, Froman, and Blumenfeld are temporarily suspended from acting in certain supervisory capacities in the States for various periods. Under the Massachusetts Agreement, Woolf is temporarily suspended from acting as a sales agent and from supervising FIC's securities activity in Massachusetts.

14. The directors of the First Investors Investment Companies have been fully apprised of the allegations giving rise to the actions described above and have determined that the retention of FIC, EIC, FIMCO, and EIMCO as distributors or advisers of the FIC Investment Companies, respectively, is in the best interests of the shareholders of those companies.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in pertinent part, prohibits any person from serving as an employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or as principal underwriter of any registered open-end company or unit investment trust, if such person or any affiliated person has been permanently or temporarily enjoined from engaging in any conduct in connection with its activities as an underwriter, broker, dealer, or investment adviser, or in connection with the purchase or sale of any security. Section 9(a)(3) prohibits a company affiliated with any disqualified person from serving or acting in the above capacities.

2. Section 9(c) of the Act provides that, upon application, the Commission shall grant an exemption from the provisions of section 9(a) either unconditionally or on appropriate temporary or other conditional basis if it is established that those provisions, as applied to the applicant, are unduly or disproportionately severe or that the conduct of applicants has been such as to not make it against the public interest or protection of investors to grant such application.

3. Applicants request an order temporarily exempting applicants from section 9(a) of the Act pending the Commission's final action on the application, and an order permanently exempting them from that provision. The order would exempt the Corporate Applicants from section 9(a) solely with respect to the Injunctions. It would permit the Corporate Applicants to continue to associate with the Individual Applicants, Froman, Blumenfeld, and Woolf and the Individual Applicants to act in the capacities of officers and trustees or directors of the First Investors Investment Companies.

4. If the relief requested by the application is granted, applicants anticipate that: Grayson would resume serving as president of FIC and EIC; Head would resume serving as an executive officer of FIC and EIC; Froman and Blumenfeld would resume serving as senior vice-presidents for sales and co-heads of one of FIC's sales complexes; and Woolf would resume serving as sales agent once their respective suspensions have been served. If the requested relief is granted, Froman, Blumenfeld, and Woolf also will remain affiliated with FIC, but will not serve in any supervisory capacity (in the case of Froman and Blumenfeld) or as sales agent or supervisor in Massachusetts (in the case of Woolf) during their respective suspensions.

5. Applicants assert that denying the requested relief from the disqualification provisions of section 9(a) would be disproportionately severe. Applicants further aver that the granting of relief is not inconsistent with the public interest and the protection of investors.

6. Applicants state that the Corporate Applicants were granted temporary relief from the provisions of section (9(c) in connection with the injunction entered by the SDNY on June 12, 1992, pending the Commission's final action on the matter.[4] Applicants further state that before the request for such relief was made, none of the Corporate Applicants had applied for or received an exemption from the provisions of section 9(a). Applicants also state that the Individual Applicants, Froman, Blumenfeld, and Woolf have not previously applied for or received an exemption from section 9(a).

7. Applicants state that since the commencement of the States' investigations, applicants have taken numerous steps designed to strengthen training, compliance, and supervision with respect to sales and distribution of FIFI and FIHY and the other First Investors Investment Companies, including: (a) Retaining an independent, outside consultant ("Broker-Dealer Consultant") to examine and report on the sales training, supervisory, and compliance practices and procedures of FIC; (b) implementing a detailed "Action Plan" incorporating the Broker-Dealer Consultant's recommendations, and instituting procedures to prevent and detect violations of the applicable laws and regulations; (c) developing and implementing a new sales presentation; (d) establishing a new training program; (e) substantially revising FIC's compliance manual; (f) increasing FIC's compliance staff that is overseen by FIC's legal department; (g) retaining outside legal counsel to examine and report on compliance with guidelines and requirements of the Act; (h) preparing a new portfolio managers' compliance manual; and (i) making changes in senior management, including, with respect to a new chief executive officer. Also, applicants assert that FIC has agreed to engage the Broker-Dealer Consultant, or another person not unacceptable to the Commission's staff, to perform a follow-up review, and further annual reviews thereafter for five years. Applicants state that after each such review, a report will be submitted to the Commission staff that will detail the extent to which the recommendations of the Broker-Dealer Consultant have been implemented and the success of the Action Plan in detecting and preventing violations of the applicable laws and regulations.

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[1] *State of New York* v. *First Investors Corp.*, Index No. 90–46431 (Supreme Court of New York County); *State of Maine* v. *First Investors Corp.*, No. CV–91–373 (Superior Court of Kennebec County); and *Commonwealth of Virginia, ex rel., State Corporation Commission* v. *First Investors Corp.*, Case No. SEC920077 (Corporation Commission of the Commonwealth of Virginia).

[2] *Commonwealth of Massachusetts* v. *First Investors Corp.*, No. 91–6423–E (Superior Court of Suffolk County).

[3] FIC was required to establish the $24.7 million disgorgement fund as part of a consent judgment and injunction entered against FIC by the Southern District Court for the Southern District of New York ("SDNY") on June 12, 1992. The judgment and injunction followed the filing of a complaint by the Commission on June 11, 1992 which alleged that FIC violated certain provisions of the Securities Exchange Act of 1934 and the Securities Act of 1933. The conduct underlying the consent judgment and the Injunctions are substantially the same.

[4] Investment Company Act Release Nos. 18778 (June 12, 1992), 19522 (June 10, 1993), and 19937 (Dec. 9, 1993).

8. Applicants further assert that the disqualification of the Corporate Applicants would be harmful to the shareholders of all of the First Investors Investment Companies. Applicants also state that if the requested exemption is not granted, it would severely jeopardize the ability of applicants to remain in business and would have an adverse effect on the Corporate Applicants' employees.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the Commission granting relief.

1. Pursuant to rule 8 of the Commission's Rules of Practice, applicants hereby consent to the staff of the Commission advising the Commission regarding the subject matter of the application and waive any provisions of law or of the Commission's rules that would prevent such *ex parte* communications and waive any claim of prejudgment by the Commission based upon any communications by the Staff with the Commission for the purpose set forth above.

2. Pursuant to rules 8(b) and 16(b) of the Commission's Rules of Practice, applicants hereby waive an initial determination by a hearing officer as to the matters set forth in the application.

3. Any temporary exemption issued pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigations of, or administrative proceedings against, applicants pursuant to the Act, including, without limitation, any administrative proceeding under section 9(b) of the Act or the consideration by the Commission of any application for exemptions from statutory requirements under the Act, including without limitation, the consideration of the permanent exemption pursuant to section 9(a) of the Act requested pursuant to this application or the revocation or removal of any temporary exemptions granted under the Act in connection with this application.

Temporary Order

The Commission has considered the matter and, without necessarily agreeing with all of the facts represented or all of the arguments asserted by applicants, finds that the denial of an order under section 9(c) of the Act, temporarily exempting applicants from the provisions of section 9(a) of the Act with respect to the Injunctions, would be disproportionately severe.

Accordingly, it is hereby ordered, under section 9(c) of the Act, that applicants hereby are temporarily exempted from the provisions of section 9(a) of the Act to the extent set forth below and subject to the conditions set forth in the application, until the earlier of the date on which the Commission takes final action on the application for a permanent order exempting applicants from the prohibitions of section 9(a), or June 12, 1994. The temporary order exempts the Corporate Applicants from section 9(a) solely with respect to the Injunctions. The temporary order also permits the Corporate Applicants to continue to associate with the Individual Applicants, Froman, Blumenfeld, and Woolf and the Individual Applicants to act in the capacities of officers and trustees or directors of the First Investors Investment Companies.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–31493 Filed 12–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19962; 812–8724]

Michigan National Bank, et al.; Conditional Temporary Order and Notice of Application

December 17, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Conditional temporary order and notice of application for permanent order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Michigan National Bank ("MNB"), Michigan National Corporation ("MNC"), and Independence One Capital Management Corporation ("IOCM").

RELEVANT ACT SECTIONS: Conditional temporary order granted, and permanent order requested, under section 9(c) for an exemption from the provisions of section 9(a).

SUMMARY OF APPLICATION: Applicants seek a permanent order under section 9(c) of the Act exempting them from the disqualification provisions of section 9(a) solely with respect to a securities-related injunction entered against MNB, and a temporary order pending the Commission's determination with respect to the permanent order. Applicants request that any relief granted pursuant to the application also apply to any other entity that is or may become an affiliated person of applicants.

FILING DATE: The application was filed on December 17, 1993.

HEARING OR NOTIFICATION OF HEARING: Interested persons may request a hearing on the application by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 11, 1994, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, 27777 Inkster Road, Farmington Hills, Michigan 48334.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Senior Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. MNB is a national banking association and a wholly-owned subsidiary of MNC. MNC is a registered bank holding company. MNB serves as investment adviser to Independence One Mutual Funds (the "Fund"). The Fund is an open-end management investment company registered under the Act, consisting of four series: Independence One Michigan Municipal Cash Fund; Independence One Prime Money Market Fund; Independence One U.S. Treasury Money Market Fund; and Independence One U.S. Government Securities Fund.

2. IOCM is a wholly-owned subsidiary of MNC and is an investment adviser registered under the Investment Advisers Act of 1940. IOCM acts as a sub-investment adviser to the Fund.

3. On December 17, 1993, the Commission filed a complaint in the United States District Court for the Southern District of New York in a civil action entitled *Securities and Exchange Commission* v. *Michigan National Bank* (the "SEC Action"). The complaint alleged that MNB violated Regulation U, as promulgated by the Board of

Governors of the Federal Reserve System under section 7(d) of the Securities Exchange Act of 1934, in connection with extensions of credit in a custodial trust account maintained for an individual named Mark Sendo.[1]

4. On the same day, MNB consented to the entry of a Final Judgment of Permanent Injunction and Other Relief (the "Final Judgment"), without admitting or denying any of the allegations in the Commission's complaint except as to jurisdiction. The Final Judgment enjoins MNB from further violations of Regulation U. The Final Judgment requires that MNB disgorge $8,500, which represents its gross custodian services fees earned on Sendo's accounts. The Final Judgment also requires MNB to adopt internal procedures designed to prevent a recurrence of the violative conduct.

5. At a meeting of the trustees of the Fund on March 8, 1993, applicants advised the trustees of the facts and circumstances giving rise to the filing of the application. The trustees then evaluated the information provided to them and, in particular, considered the alleged misconduct, the conduct of MNC and IOCM and the impact of the alleged misconduct on MNB's and IOCM's ability to serve as adviser and subadviser, respectively. In addition, the trustees at that time consulted with legal counsel who is experienced in matters involving the Act, which counsel has no relationship with or affiliation to applicants, concerning the trustees' fiduciary responsibilities. Based upon such review and consultation, the trustees, a majority of whom are not "interested persons" of applicants as such term is defined in the Act, concluded that the alleged misconduct does not adversely affect applicants' continuing ability to provide investment advisory services to the Fund. Following consideration of these matters, the trustees at that meeting unanimously voted to continue the Fund's current investment advisory contract with MNB and IOCM.

6. In making the application, applicants acknowledge, understand, and agree that the application and any temporary exemption issued by the Commission shall be without prejudice to the Commission's consideration of any application for exemptions from statutory requirements, including the consideration of the instant application for a permanent exemption pursuant to section 9(c) or the revocation or removal of any temporary exemption granted in connection with the application.

Applicants' Legal Analysis

1. Applicants seek a permanent order exempting them and their affiliates from the provisions of section 9(a) of the Act solely with respect to the Final Judgment, and a temporary order pending the Commission's determination with respect to the permanent order.

2. Section 9(a) of the Act, in pertinent part, disqualifies any person or company from serving or acting in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company if such person, or an affiliated person of such person, has, by reason of misconduct, been permanently or temporarily enjoined by an order, judgment, or decree from any court of competent jurisdiction from acting as an underwriter, broker, dealer, or investment adviser, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.

3. Section 9(c) provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe or that the conduct of the applicant has been such as not to make it against the public interest or protection of investors to grant such application.

4. As a result of the Final Judgment, MNB and its affiliated persons are subject to the disqualification provisions of section 9(a). Applicants assert that the application of such provisions to them is unduly and disproportionately severe. Applicants further assert that MNB's conduct has been such as not to make it against the public interest or protection of investors to grant the requested relief.

5. Applicants state that the conduct that gave rise to the SEC Action was not in any way related to activities of applicants as investment advisers.

6. Applicants state that the SEC Action will subject IOCM and MNC to the prohibitions of section 9(a) solely because they are affiliated persons of MNB. IOCM and MNC are not parties to the SEC Action and are not alleged to have been involved in any way with the activities that form the basis of that action. Applicants also state that none of applicants' officers or employees who are engaged in the provision of investment advisory services to the Fund participated in any way in the conduct alleged to have constituted the violations which resulted in the SEC Action.

7. Applicants assert that applicants' senior management were not involved with, and had no knowledge of, the conduct alleged to have constituted the violations which form the basis of the SEC Action. Moreover, the SEC Action does not involve allegations of fraud involving applicants' senior management.

8. Applicants assert that denial of the requested order could be detrimental to the Fund's investors because the investors would no longer have the services of the Fund's investment advisers. Investors also could be harmed by the uncertainty caused by applicants being prohibited from serving the Fund, which could result in multiple redemptions of the Fund's shares. In addition, the replacement of MNB and IOCM would result in substantial costs because of the need to obtain shareholder approval of a new investment advisory agreement with a new adviser.

9. Applicants state that MNB and IOCM have not previously been subject to any Commission enforcement proceedings. MNC, however, was the subject of two prior Commission enforcement actions. In 1981, MNC consented to the entry by the Commission of an administrative order pursuant to section 15(c)(4) of the Exchange Act. The Commission found that MNC had failed adequately to disclose all of the circumstances under which its subsidiaries engaged in sale-leaseback transactions involving bank premises with officers and directors of MNC and its subsidiary banks.[2] In 1985, MNC consented to the entry of a permanent injunction enjoining MNC from violations of the reporting, books and records, and proxy provisions of the Exchange Act. The Commission's complaint alleged that MNC's former chairman and chief executive officer obtained $282,000 in undisclosed benefits from MNC, including, among

[1] The Commission brought an action against Sendo and two of his associates for "free-riding"—paying for purchases of securities with anticipated proceeds from offsetting sales of the same securities—in violation of the antifraud and margin provisions of the federal securities laws in June 1991. *SEC* v. *Sendo, Burman and Tringale*, 91 Civ. 4408 (S.D.N.Y.), Litigation Release No. 12894 (June 27, 1991). Summary judgment was rendered in favor of the Commission in October 1992. Litigation Release No. 13475 (Dec. 17, 1992).

[2] *See* Securities Exchange Act Release No. 17902 (June 30, 1981).

other things, construction, maintenance, and delivery services.[3] Applicants state that these prior Commission enforcement actions did not involve activities of MNB and IOCM as investment advisers.[4]

10. Applicants state that they have not previously filed an application for relief pursuant to section 9(c).

11. Applicants state that MNB has adopted policies and procedures to ensure that the alleged violations do not recur. Upon being advised of the alleged Regulation U violations, MNB took steps designed to strengthen training, compliance, and supervision, and prevent future activity which may violate applicable laws and regulations relating to Regulation U.

In addition, in accordance with the final Judgment, MNB has taken or will take the following steps to remedy its conduct and prevent the recurrence of violations:

a. MNB will maintain policies and procedures to ensure that it complies with Regulation U, including policies to ensure that purchases of securities in custodial accounts are not paid for with proceeds from sales of the same securities in the accounts.

b. Within thirty days after the entry of the Final Judgment, MNB will retain an independent consultant who will review MNB's custodial securities clearing operations and who will make such recommendations as are necessary with respect to MNB's policies and procedures to ensure that MNB complies with Regulation U.[5]

c. The consultant will issue a report within sixty days of its retention setting forth its findings and recommendations and will forward the report to the New York Regional Office. Unless the Commission objects to the consultant's recommendations within thirty days, applicants will implement the consultant's recommendations by no later than forty days after the end of the period for the Commission to object.

[3] *See SEC* v. *Michigan National Corp.*, 85 Civ. 70331 (E.D. Mich. Jan. 24, 1985), Litigation Release No. 10664 (Jan. 30, 1985).

[4] Applicants have not requested, and the Division of Investment Management has not provided, any assurance as to whether the 1985 injunction is disqualifying under section 9.

[5] Applicants state that MNB has retained an independent consultant to review MNB's custodial securities clearing operations and to make recommendations as are necessary with respect to MNB's policies and procedures to ensure that MNB complies with Regulation U. The independent consultant issued a report dated October 19, 1993 stating that appropriate policies and procedures have been implemented by MNB to ensure compliance with Regulation U.

Applicants' Condition

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the condition that applicants will comply with the Final Judgment.

Temporary Order

The Commission has considered the matter and, without necessarily agreeing with all the facts represented or all of the arguments asserted by applicants, finds that the issuance of a temporary order under section 9(c) of the Act, subject to the foregoing condition, is not inconsistent with the public interest or the protection of investors.

Accordingly, it is hereby ordered, under section 9(c) of the Act, that applicants and their affiliated persons be, and hereby are, granted a temporary exemption from the provisions of section 9(a) of the Act, solely with respect to the Final Judgment, subject to the condition contained in the application, which condition is expressly incorporated herein, pending the Commission's determination with respect to the permanent order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–31421 Filed 12–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19961; 812–8726]

NBD Bank, N.A., et al.; Conditional Temporary Order and Notice of Application

December 17, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Conditional temporary order and notice of application for permanent order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: NBD Bank, N.A. ("NBD"), NBD Bank, and NBD Bancorp, Inc.

RELEVANT ACT SECTIONS: Conditional temporary order granted, and permanent order requested, under section 9(c) for an exemption from the provisions of section 9(a).

SUMMARY OF APPLICATION: Applicants seek a permanent order under section 9(c) of the Act exempting them from the disqualification provisions of section 9(a) solely with respect to a securities-related injunction entered against NBD, and a temporary order pending the Commission's determination with respect to the permanent order. Applicants request that any relief granted pursuant to the application also apply to any other entity that is or may become an affiliated person of applicants.

FILING DATE: The application was filed on December 17, 1993.

HEARING OR NOTIFICATION OF HEARING: Interested persons may request a hearing on the application by writing to the SEC's Secretary and serving applicants with a copy of the request, personnally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 11, 1994 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, NBD and NBD Bancorp, Inc., 611 Woodward Avenue, Detroit, Michigan 48226. NBD Bank, 211 South Wheaton Avenue, Wheaton, Illinois 60189.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Senior Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. NBD is a national banking association and a wholly-owned subsidiary of NBD Bancorp, Inc. NBD serves as investment adviser to The Woodward Funds and Renaissance Assets Trust (the "Funds"). The Funds are open-end management investment companies registered under the Act. The Woodward Funds consist of thirteen separate portfolios: Woodward Growth/Value Fund; Woodward Opportunity Fund; Woodward Intrinsic Value Fund; Woodward Equity Index Fund; Woodward Intermediate Bond Fund; Woodward Bond Fund; Woodward Money Market Fund; Woodward Government Fund; Woodward Treasury Money Market Fund; Woodward Tax-Exempt Money Market Fund; Woodward Michigan Tax-Exempt Money Market Fund; Woodward Municipal Bond Fund; and Woodward Michigan Municipal Bond Fund. It is anticipated that additional portfolios

will commence operation at calendar year-end 1993 or shortly thereafter. Renaissance Assets Trust consists of two separate portfolios: the Renaissance Government Fund and the Renaissance Money Market Fund.

2. NBD Bank is a wholly-owned subsidiary of NBD Illinois, Inc., which is a wholly-owned subsidiary of NBD Bancorp. NBD Bank is not currently an investment adviser to any registered investment company. NBD Bank has entered into an agreement to act as sub-investment adviser to the Separate Account I (the "Separate Account") of the Washington National Life Insurance Company ("Washington National").

3. NBD Bancorp, Inc. is a bank holding company incorporated under Delaware law.

4. On December 17, 1993, the Commission filed a complaint in the United States District Court for the Southern District of New York in a civil action entitled *Securities and Exchange Commission* v. *Commerce Bank* (the "SEC Action"). The complaint alleged that NBD violated Regulation U, as promulgated by the Board of Governors of the Federal Reserve System under section 7(d) of the Securities Exchange Act of 1934, in connection with extensions of credit in a custodial trust account maintained for an individual named Mark Sendo.[1]

5. On the same day, NBD consented to the entry of a Final Judgment of Permanent Injunction and Other Relief (the "Final Judgment"), without admitting or denying any of the allegations in the Commission's complaint except as to jurisdiction. The Final Judgment enjoins NBD from further violations of Regulation U. The Final Judgment requires that NBD disgorge $2,500, which represents its gross custodian services fees earned on Sendo's accounts. In addition, the Final Judgment requires NBD to pay a civil money penalty of $100,000. The Final Judgment also requires NBD to adopt internal procedures designed to prevent a recurrence of the violative conduct.

6. Applicants have been advised by the trustees of the Funds and by Washington National that (a) the trustees of the Funds and the directors of Washington National have reviewed the circumstances pertinent to the Final Judgment, and, in the case of the Funds, have considered the prior services rendered to the Funds by NBD; and (b) after review and consideration of such factors as they deemed appropriated, the trustees of the Funds and the directors of Washington National have determined that the retention of NBD in the case of the Funds and of NBD Bank in the case of Washington National as investment adviser is in the best interests of the Funds' shareholders and the account holders of the Separate Account. Applicants state that no trustee of the Funds is an interested person, as defined in the Act, of applicants.

7. In making the application, applicants acknowledge, understand, and agree that the application and any temporary exemption issued by the Commission shall be without prejudice to the Commission's consideration of any application for exemptions from statutory requirements, including the consideration of the instant application for a permanent exemption pursuant to section 9(c) or the revocation or removal of any temporary exemption granted in connection with the application.

Applicants' Legal Analysis

1. Applicants seek a permanent order exempting applicants and their affiliates from the provisions of section 9(a) of the Act solely with respect to the Final Judgment, and a temporary order pending the Commission's determination with respect to the permanent order.

2. Section 9(a) of the Act, in pertinent part, disqualifies any person or company from serving or acting in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company if such person, or an affiliated person of such person, has, by reason of misconduct, been permanently or temporarily enjoined by an order, judgment, or decree from any court of competent jurisdiction from acting as an underwriter, broker, dealer, or investment adviser, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.

3. Section 9(c) provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe or that the conduct of the applicant has been such as not to make it against the public interest or protection of investors to grant such application.

4. As a result of the Final Judgment, NBD and its affiliated persons are subject to the disqualification provisions of section 9(a). Applicants assert that the application of such provisions to applicants is unduly and disproportionately severe. Applicants further assert that NED's conduct has been such as not to make it against the public interest or protection of investors to grant the requested relief.

5. Applicants state that the conduct that gave rise to the Final Judgment was not in any way related to activities of applicants as investment advisers. Applicants further state that neither applicants' senior management nor anyone involved in the management of investment advisory services on applicants' behalf were involved in the activities giving rise to the SEC Action.

6. Applicants assert that denial of the requested order would cause irreparable injury to applicants and to the Funds' investors because the investors would no longer have the services of their investment adviser. In addition, investors could be harmed by the uncertainty caused by applicants being prohibited from serving as investment advisers to the Funds.

7. NBD has implemented policies and procedures designed to prevent a recurrence by other account holders of the type of conduct that gave rise to the SEC Action. In addition, pursuant to the Final Judgment, NBD has taken or will take the following steps to remedy its conduct and prevent the recurrence of violation:

a. NBD will maintain policies and procedures to ensure that it complies with Regulation U, including policies to ensure that purchases of securities in custodial accounts are not paid for with proceeds from sales of the same securities in the accounts.

b. Within thirty days after the entry of the Final Judgment, NBD will retain an independent consultant who will review NBD's custodial securities clearing operations and who will make such recommendations as are necessary with respect to NBD's policies and procedures to ensure that NBD complies with Regulation U.

c. The consultant will issue a report within sixty days of its retention setting forth its findings and recommendations and will forward the report to the New

[1] The Commission brought an action against Sendo and two of his associates for "free-riding"—paying for purchases of securities with anticipated proceeds from offsetting sales of the same securities—in violation of the antifraud and margin provisions of the federal securities laws in June 1991. *SEC* v. *Sendo, Burman and Tringale,* 91 Civ. 4408 (S.D.N.Y.), Litigation Release No. 12894 (Jun. 27, 1991). Summary judgment was rendered in favor of the Commission in October 1992. Litigation Release No. 13475 (Dec. 17, 1992).

York Regional Office.[2] Unless the Commission objects to the consultant's recommendations within thirty days, applicants will implement the consultant's recommendations by no later than forty days after the end of the period for the Commission to object.

8. Applicants state that they have not been the subject of prior Commission enforcement proceedings, and have not previously filed an application for relief pursuant to section 9(c) of the Act.

Applicants' Condition

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the condition that NBD will comply with the Final Judgment.

Temporary Order

The Commission has considered the matter and, without necessarily agreeing with all the facts represented or all of the arguments asserted by applicants, finds that the issuance of a temporary order under section 9(c) of the Act, subject to the foregoing condition, is not inconsistent with the public interest or the protection of investors.

Accordingly, it is hereby ordered, under section 9(c) of the Act, that applicants and their affiliated persons be, and hereby are, granted a temporary exemption from the provisions of section 9(a) of the Act, solely with respect to the Final Judgment, subject to the condition contained in the application, which condition is expressly incorporated herein, pending the Commission's determination with respect to the permanent order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–31419 Filed 12–23–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Administration

[Public Notice 1919]

North American Free Trade Agreement

Notice is hereby given that the Department of State is the federal agency to which notices and other arbitration documents are to be delivered pursuant to Article 1137(2) and Annex 1137.2 of the North American Free Trade Agreement. Delivery should be made to the attention of the Office of the Legal Adviser, Executive Director (L/EX).

Dated: December 13, 1993.

Ted A. Borek,

Assistant Legal Adviser, Economic Business and Communication Affairs.

[FR Doc. 93–31790 Filed 12–23–93; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–93–030]

Houston/Galveston Navigation Safety Advisory Committee; Meeting

AGENCY: U.S. Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee will meet on Thursday, January 27, 1994, in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9 a.m. and end at approximately 1 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Presentation of the minutes of the Inshore and Offshore Waterways Subcommittees and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.
4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District, on navigation safety matters affecting the Houston/Galveston area.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

FOR FURTHER INFORMATION CONTACT: J.P. Novotny, LT, USCG, Recording Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–6235.

Dated: December 8, 1993.

J.C. Card,

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

[FR Doc. 93–31514 Filed 12–23–93; 8:45 am]

BILLING CODE 4910–14–M

[CGD 08–93–032]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

AGENCY: U.S. Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee will meet on Thursday, January 6, 1994, at West Gulf Maritime Association, Portway Plaza, suite 200, 1717 East Loop, Houston, Texas 77029. The meeting is scheduled to begin at 9 a.m. and end at 10:30 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

FOR FURTHER INFORMATION CONTACT: J.P. Novotny, LT, USCG, Recording Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–6235.

Dated: December 8, 1993.

J.C. Card,

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

[FR Doc. 93–31516 Filed 12–23–93; 8:45 am]

BILLING CODE 4910–14–M

[CGD 08–93–031]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Inshore Waterway Management Subcommittee of the

[2] Applicants state that in a report dated July 12, 1993, an independent consultant concluded that, based on its review, the policies and procedures of the custodian securities clearing operations for non-investment adviser accounts of NBD are reasonably designed to ensure compliance with the requirements of Regulation U. Applicants state that the recommendations of the independent consultant have been implemented.

Houston/Galveston Navigation Safety Advisory Committee will meet on Thursday, January 6, 1994, at West Gulf Maritime Association, Portway Plaza, suite 200, 1717 East Loop, Houston, TX 77029. The meeting is scheduled to begin at 10:30 a.m. and end at 12 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration of the Subcommittee.
4. Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

FOR FURTHER INFORMATION CONTACT: J.P. Novotny, LT, USCG, Recording Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–6235.

Dated: December 8, 1993.

J.C. Card,

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

[FR Doc. 93–31517 Filed 12–23–93; 8:45 am]

BILLING CODE 4910–14–M

[CGD–08–93–029]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee will meet on Wednesday, January 12, 1994, in room 1830 of the World Trade Center, 2 Canal Street, New Orleans, Louisiana. The meeting will begin at 9 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the April 20, 1993 meeting.
3. Old Business.
4. New Business.
5. VTS New Orleans update.
6. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting this waterway.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. M.M. Ledet, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: December 8, 1993

J.C. Card,

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

[FR Doc. 93–31515 Filed 12–23–93; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting on Noise Certification Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss noise certification issues.

DATES: The meeting will be held on January 20, 1994, at 9 a.m. Arrange for oral presentations by January 13, 1994.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Jean Casciano, Federal Aviation Administration, Office of Rulemaking (ARM–25), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on January 20, 1994, at the General Aviation Manufacturers Association, Suite 801, 1400 K Street, NW., Washington, DC 20005. The agenda will include:

- Committee administration.
- Consideration of a proposed task to harmonize Part 36 of the Federal Aviation Regulations with the European JAR 36.
- A discussion of future meeting dates, activities, and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 13, 1994, to present oral statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on December 15, 1993.

Paul R. Dykeman,

Assistant Executive Director for Noise Certification Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–31499 Filed 12–23–93; 8:45 am]

BILLING CODE 4910–03–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Dallas-Fort Worth International Airport, DFW Airport, Texas

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 Dallas-Fort Worth 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).

DATES: Comments must be received on or before January 26, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Vernell Sturns, Executive Director, Dallas-Fort Worth International Airport at the following address: Vernell Sturns, Executive Director, Dallas-Fort Worth International Airport, P.O. Drawer DFW, DFW Airport, TX 75261.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0610, (817) 222–5614.

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 Dallas-Fort Worth 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) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 15, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport 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 April 14, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1994.

Proposed charge expiration date: February 1, 1996.

Total estimated PFC revenue: $115,000,000.00.

Brief description of proposed project(s): Projects To (Impose and Use) PFC's. Design and Construct Runway 16/34 East and Related Development/ Mitigation.

Proposed class or classes of air carriers to be exempted from collecting PFC's: All Air Taxi/Commercial Operators operating under a certificate authorizing transport of passengers for hire under FAR part 135 that file FAA form 1800–31; and Air Carriers operating under a certificate authorizing transport of passengers for hire under FAR part 121, 125, or 129 providing service from DFW Airport that enplane 5,000 or fewer passengers.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Planning and Programming Branch, Airports Division, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Dallas-Fort Worth International Airport.

Issued in Fort Worth, Texas, on December 17, 1993.

Otis T. Welch,

Acting Manager, Airports Division.

[FR Doc. 93–31462 Filed 12–23–93; 8:45 am]

BILLING CODE 4910–13–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 246
Monday, December 27, 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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published in **Federal Register** on December 22, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, December 22, 1993.

CHANGES IN THE MEETING: The open meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 21, 1993

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–31578 Filed 12–22–93; 8:45 am]

BILLING CODE 6210–01–P

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Presidential Search Committee Meeting Notice

TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors Presidential Search Committee will be held on January 7, 1994. The meeting will commence at 1:30 p.m.

PLACE: The Legal Services Corporation, 750 1st Street, N.E., 11th Floor, The Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Approval of Minutes of December 18, 1993. Hearing.
3. Receipt and Consideration of Presentation by Thomas Gilmore, Center for Applied Research, on Background for Presidential Searches.
4. Consider and Act on Process to be Utilized for Selecting the Corporation President.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Dated: December 22, 1993.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 93–31704 Filed 12–22–93; 3:36 pm]

BILLING CODE 7050–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

By telephone vote on December 15–16, 1993, a majority of the members contacted and voting, the Board of Governors voted to add to the agenda of its meeting closed to public observation on January 3, 1994, in Washington, DC, consideration of funding requests for the Chicago, Illinois, General Mail Facility; and the Church Street Station, New York, New York.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Mackie, Pace, Setrakian and Winters; Postmaster General Runyon; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(6) and (9)(B) of title 5, United States Code, and section 7.3(f) and (i) of title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it would be likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and further, is likely to disclose information, the premature disclosure of which would significantly frustrate proposed procurement actions.

The Board further determined that the public interest did not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(6) and (9)(B) of title 5, United States Code; and section 7.3(f) and (i) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 93–31702 Filed 12–22–93; 3:36 pm]

BILLING CODE 7710–12–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 9:30 a.m. on Monday, January 3, 1994, and at 8:30 a.m. to Tuesday, January 4, 1994, in Washington, DC. The January 3 meeting, at which the Board will consider (1) the August 25, 1993, Postal Rate Commission Opinion and Recommended Decision in Docket No. MC93–1, Bulk Small Parcel Service, 1992 (See 58 FR 65426, December 14, 1993); and (2) funding requests for the Chicago, Illinois, General Mail Facility, and the Church Street Station, New York, is closed to the public.

The January 4 meeting is open to the public and will be held in the Benjamin Franklin Room on the 11th floor of U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

Agenda

Monday Session, January 3—9:30 a.m. (Closed)

1. Consideration of the Postal Rate Commission Opinion and Recommended Decision in Docket No. MC93–1, Bulk Small Parcel Service, 1992. (Allen R. Kane, Vice President, Product Management)
2. Capital Investments. (Philip E. Wilson, Acting Vice President, Facilities)

a. Interim Funding for the Chicago, Illinois, General Mail Facility.

b. Church Street Station, New York, New York.

Tuesday Session, January 4—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, December 6–7, 1993.

2. Remarks of the Postmaster General/ Chief Executive Officer. (Marvin Runyon)

3. Annual Report on the Government in the Sunshine Act Compliance. (David F. Harris, Secretary to the Board)

4. Report on the BOG Committee's Review of the Capital Investment Process. (Governors Tirso del Junco and LeGree S. Daniels)

5. Annual Report of the Postmaster General. (Corporate Relations)

6. Comprehensive Statement to Congress. (Robert F. Harris, Vice President, Legislative Affairs)

7. Capital Investments. (William J. Dowling, Vice President, Engineering)

a. Printer/Label Applicator.

b. Carrier Sequence Bar Code Sorter (CSBCS).

8. Election of the Board Chairman and Vice Chairman.

9. Tentative Agenda for February 7–8, 1994, meeting in Sacramento, California.

David F. Harris,

Secretary.

[FR Doc. 93–31703 Filed 12–22–93; 3:36 pm]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 58, No. 246
Monday, December 27, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No.: EE-NOA-93-101]

Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies Management Plan

Correction

In notice document 93-27124 appearing on page 58856 in the issue of Thursday, November 14, 1993, in the second column, in the **DATES**, in the second line, "January 3, 1993." should read "January 3, 1994."

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 94-07: Computer Hardware Advanced Mathematics and Climate Physics (CHAMMP) Program

Correction

In notice document 93-30265 beginning on page 64937 in the issue of Friday, December 10, 1993, make the following correction:

On page 64938, in the 1st column, in the 2d full paragraph, in the 11th line, "1011" should read "10^{11}".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7020

[AK-932-4210-06; AA-16672, AA-17981, AA-17988]

Partial Revocation of Executive Order No. 3406 Dated February 13, 1912, for Selection of Lands by the State of Alaska; Alaska

Correction

In rule document 93-29703 appearing on page 64166 in the issue of Monday, December 6, 1993, make the following corrections:

On page 64166, in the third column:

1. In the first line from the top, "906(c)" should read "906(b)".

2. In paragraph 3., in the second line from the bottom, "5190" should read "5180".

BILLING CODE 1505-01-D

federal register

Monday
December 27, 1993

Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 7 and 24

Community Development Corporation and Project Investments; Final Rule

DEPARTMENT OF THE TREASURY

Office of The Comptroller of The Currency

12 CFR Parts 7 and 24

[Docket No. 93–21]

RIN 1557–AB31

Community Development Corporation and Project Investments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its regulations concerning national bank investments in community development corporations (CDCs) and community development projects (CD projects) to implement section 6 of the Depository Institutions Disaster Relief Act of 1992. The final rule allows national banks to request OCC approval to increase the amount of their single project and aggregate investments in CDCs and CD projects above current investment limits. The final rule also permits national banks that meet certain criteria to make most CDC and CD-project investments without prior OCC approval if they provide a brief self-certification notice of compliance with the rule. This approach will reduce regulatory burdens associated with CDC and CD-project investments, in a manner that will not endanger banks' safety and soundness. The final rule is intended to promote economic growth and investments in low- and moderate-income areas and underserved rural communities by allowing national banks to make their equity and special debt investments in CDCs and CD projects that provide affordable housing, services and jobs for low- and moderate-income people, and promote small business development.

EFFECTIVE DATE: December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Karen Bellesi, Community Development Specialist, Community Development Division, at (202) 874–4930, or Margaret C. Hesse, Attorney, Bank Operations and Assets Division, at (202) 874–4460, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

On October 23, 1992, section 6 of the Depository Institutions Disaster Relief Act of 1992, Public Law 102–485, created 12 U.S.C. 24 (Eleventh), which clarifies the community development investment authority of national banks. The primary basis for the final rule is the new statutory authority in 12 U.S.C. 24 (Eleventh), and the final rule replaces Interpretive Ruling 7.7480 (I.R. 7.7480) at 12 CFR 7.7480 as the basis for community development investments.

The OCC has historically permitted community development investments under the provisions of I.R. 7.7480 based upon the authority granted by 12 U.S.C. 24 (Eighth). Since the 1960s, national banks have submitted CDC and CD-project investment proposals for OCC review and opinion, and the OCC has responded to those requests by providing opinion letters indicating whether, and under what conditions, the CDC or CD-project investments are consistent with I.R. 7.7480.

Under 12 U.S.C. 24 (Eighth), a national bank may contribute to community funds or to charitable, philanthropic, or benevolent instrumentalities conducive to public welfare, if the bank is located in a state with laws that do not expressly prohibit state banking institutions from contributing to such funds or instrumentalities. I.R. 7.7480, originally issued in 1963 and revised in 1971, permits national banks to carry, as "other assets," equity or debt investments in CDCs or CD projects that are not bankable assets by ordinary standards, provided the investments are predominantly civic, community, or public in nature. I.R. 7.7480 limits a bank's investment in an individual CDC or CD project to no more than 2 percent of its capital and surplus and the aggregate of all such investments by the bank to 5 percent of its capital and surplus. Banking Circular 185, issued in 1984 and revised in 1990, further describes OCC policies regarding CDC and CD-project investments and recommends a process banks could use to seek a prior written opinion from the OCC.

The new statute and this final regulation do not alter the OCC's position regarding any interpretations of 12 U.S.C. 24 (Eighth) that are already in effect, including opinion letters approving or disapproving past CDC or CD-project investments. While this final rule removes I.R. 7.7480, the OCC intends no change in its interpretation of 12 U.S.C. 24 (Eighth) as it applies to a national bank's charitable contributions to CDCs and CD projects. Banks should continue to expense these contributions, follow 12 U.S.C. 24 (Eighth), and refer to the Internal Revenue Code (26 U.S.C. 170) for tax treatment of the contributions.

II. The Proposed Rule

On July 16, 1993, the OCC issued a notice of proposed rulemaking (proposed rule), published at 58 FR 38474, entitled Community Development Corporation and Project Investments, to implement 12 U.S.C. 24 (Eleventh) and remove I.R. 7.7480.

There were three major goals of this action.

First, the proposed rule implements the statutory requirement for investment limits. Section 24 (Eleventh) requires the OCC to establish two limits on national bank CDC and CD-project investments—one on a national bank's investments in any one CDC or CD project, and one on the total national bank's investments in all CDCs and CD projects. A bank's aggregate investments may not exceed 5 percent of its unimpaired capital and surplus unless the OCC determines, by order, that the higher amount will pose no significant risk to affected deposit insurance fund administered by the Federal Deposit Insurance Corporation and the bank is adequately capitalized. In no case may a bank's aggregate investments exceed 10 percent of its unimpaired capital and surplus.

Second, the proposed rule reduces by approximately 80 percent the number of CDC and CD-project investments that would require the OCC's prior review. The OCC proposed a streamlined review process for most banks and some investments and established an expedited 30-day review process for investments requiring prior review. As structured, the proposed rule allows the OCC to focus its resources on the review of large, complex investments that involve structures or activities not already approved. To help identify structures and activities qualifying for self-certification, the proposed rule provides a list at § 24.13.

Third, the proposed rule clarifies the standards and definitions for CDC and CD-project investments that are primarily designed to promote the public welfare, including the welfare of low- and moderate-income families and communities, under the new statutory requirements. This clarification was intended to increase bank management's understanding of definitions, standards and requirements, and improve banks' ability to meet them.

The OCC invited public comment on any aspect of the proposed rule during a 30-day period that ended on August 16, 1993. It received 22 comment letters from national and state bank trade associations, national banks, community groups, and other trade associations. Eighteen commenters specifically

supported the proposed rule. Four commenters raised issues without expressing either support or opposition to the proposed rule.

The final rule includes changes to the proposed rule based primarily on comment letters and changes that grew out of the rulemaking process although not specifically addressed by the commenters. Much of the final rule is adopted, as proposed.

III. Review of Comments

The following is a discussion of the issues raised by the commenters, the OCC's responses to those comments, and a summary of changes made as a result of the comments.

A. Section 24.4(a) Permitted Public Welfare Investments

Investments to Promote the Public Welfare

The proposed rule provides that, subject to the provisions of 12 U.S.C. 24 (Eleventh), a national bank could make an equity or debt investment in a CDC or CD project that is designed primarily to promote the public welfare. Under proposed § 24.4(a) (1) and (2), a CDC and CD-project investment promotes the public welfare if it meets two criteria. First, the primary benefit of the investment should go to low- and moderate-income persons and families or small businesses, including minority-owned small businesses. Second, the investment should benefit a community served by the bank by addressing one or more demonstrated community development needs, including the needs of low- and moderate-income areas, underserved rural communities, or governmental-designated redevelopment areas.

Many commenters were concerned that the proposed rule excluded both public purpose projects designed to benefit a bank's entire community and those projects where low- and moderate-income residents are only some of the project's beneficiaries, as occurs in mixed-use projects. Further, some commenters were concerned that the proposed rule excluded economically depressed areas with low-income residents, because of their interpretation of the proposed rule's requirement that public welfare projects must meet both the definitions of "low- and moderate-income areas" and "low- and moderate-income persons or families." Those commenters suggested that those definitions might not be appropriate for every investment and every community, and that the rule should permit bank investments in CDCs and CD projects that benefit the bank's entire community.

The underlying statute for national bank investments in CDCs and CD projects, 12 U.S.C. 24 (Eleventh), permits banks to make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families, such as by providing housing, services or jobs. The OCC did not intend to exclude public purpose projects designed to benefit economically depressed areas or a bank's entire community as long as the majority of the activities, services or products resulting from a bank's CDC or CD-project investment benefit either low- and moderate-income residents or small businesses, including minority-owned small businesses, and address a community development need that has not been addressed by the private market.

Based on the comments, the final rule modifies proposed § 24.2(a)(2) to add that the CDC or CD-project investment must address community development needs that have not been addressed by the private market within low-and moderate-income areas, underserved rural areas, or governmental-designated redevelopment areas. In addition, to be consistent with the statute regarding investments to promote the public welfare of low- and moderate-income families, § 24.4(a)(1) has been changed to add that CDC and CD-project investments, which primarily benefit low- and moderate-income persons and families, should be through activities such as those that provide housing, services, or jobs.

Demonstration of Primary Benefit

One commenter asked the OCC to explain how a bank can demonstrate that an investment primarily benefits low- and moderate-income residents or small businesses. To determine if an investment primarily benefits low- and moderate-income residents or small businesses, including minority-owned small-owned businesses, the OCC generally will use the following guidelines.

An investment usually will qualify if the CDC or CD project: (1) Involves initiatives to develop housing for low- and moderate-income persons or families; (2) provides critical services or creates jobs for low- and moderate-income persons; or (3) provides nonbankable loans or investments to either small businesses, including minority-owned small businesses, or low- and moderate-income persons. Additionally, the majority of the housing units developed, non-bankable loans or investments provided, or jobs created must be occupied by, or delivered to low- and moderate-income persons in low- to moderate-income areas, underserved rural communities, or governmental-designated redevelopment areas. In addition, if the CDC or CD-project investment involves commercial or industrial development programs and activities, the majority of the commercial and industrial space must be leased to, and occupied by small businesses, including minority-owned small businesses, located in low- to moderate-income areas, underserved rural communities, or governmental-designated redevelopment areas.

Changes to Related Definitions

The final rule also revises the definitions of a CDC in § 24.2(b) and a CD project in § 24.2(e). Specifically, the definition of a CDC in the final rule indicates that other community development initiatives include activities considered as permitted public welfare investments. Also, a CDC operates generally in low- to moderate-income areas, underserved rural communities, or governmental-designated redevelopment areas within local or state incorporated areas, such as towns, cities, counties, or states. The CD- project definition also adds reference to those community development initiatives considered as permitted public welfare investments, and clarifies that bank investments in community development banks or other community development financial intermediaries qualify as CD-project investments.

B. Section 24.4(a)(3) Community Involvement Criteria

Under proposed § 24.4(a)(3), for an investment to be considered a public welfare investment, nonbank community involvement must be demonstrated including representation by the affected low- and moderate-income housing or small business sector, including representatives of minority-owned small businesses and public officials. The proposed rule also indicates that banks must assure that a CDC controlled by one or more national banks would demonstrate community involvement in the CDC's board of directors. Three commenters suggested that the rule should provide further guidance regarding what the OCC means by nonbank community involvement in CDCs and CD projects.

The OCC agrees with the commenters' suggestion that the rule should provide additional clarity regarding nonbank community involvement. To provide that clarity, the OCC has added a

definition to the final rule, at § 24.2(j), for nonbank community involvement that describes how nonbank community involvement should be demonstrated in both CDCs and CD projects.

C. Sec. 24.4(a)(4) Restrictions on Profits and Dividends

Under proposed § 24.4(a)(4), profits and dividends received by a bank from its CDC or CD-project investment must be devoted to activities that primarily promote the public welfare, and, in the case of a for-profit CDC controlled by one or more national banks, during the first three years of operation, all profits and dividends must be reinvested in the CDC.

Some commenters said that the proposed rule's restrictions on the distribution of profits and dividends are counterproductive. They said that these restrictions would discourage bank investments in CDCs and CD projects and would not allow banks to use such funds to cover potential bank losses or to increase bank capital.

The OCC has always restricted a bank's use of profits, dividends, and other distributions from CDC and CD-project investments to activities and programs that fulfill qualifying, community or other public purposes. The OCC believes that these bank investments, not normally permissible under law, are permissible only because they meet the public welfare test of 12 U.S.C. 24 (Eleventh). Consequently, profits, dividends, tax credits and other distributions from these investments are not for general bank use like those from other private, entrepreneurial banking activities, but are restricted for qualifying public purposes. The OCC believes that reinvesting profits and dividends is one way to ensure a bank's long-term commitment to address the ongoing needs of its communities and provide benefits to low- and moderate-income persons and families and small businesses, including minority-owned small businesses. In addition, a bank benefits from these reinvestments because a strong economic environment increases the opportunity and customer base for banks to provide bankable loans.

The OCC has retained the restrictions on profits and dividends. The OCC has added in the final rule, under § 24.4(a)(4), that tax credits and other distributions from CD-project investments, for example, real estate limited partnerships, and interest income from debt investments must also be used by the bank to promote the public welfare as determined by the OCC. This will ensure that there is consistent treatment of all distributions from CDCs and CD-project investments.

D. Sec. 24.4(e) CDC and CD-Project Policies

Under proposed § 24.4(e), the bank's board of directors must adopt written policies governing CDC and CD-project investments. Some commenters opposed this requirement because they believe that their community development investments have become an integral part of their banks' Community Reinvestment Act (CRA) programs, and that CRA currently requires active board of director oversight of its CDC and CD-project investments.

The OCC continues to believe that CDC and CD-project investments can be successful for most banks if bank management devotes adequate attention to assuring compliance with regulatory requirements, evaluating and achieving CDC and CD-project goals, and managing CDC and CD-project investments. This is especially critical for CDC and CD-project investments that are eligible for the self-certification process. Bank board oversight is critical for the successful management of CDC and CD-project investments.

Based on the commenters' suggestion, the OCC has restated its requirement regarding CDC and CD-project policies. The final rule indicates that a bank's board of directors shall manage the bank's CDC and CD-project investments in a prudent manner consistent with safe and sound banking policies.

E. Self-Certification Process

Threshold for Banks to Self-Certify Investments

Under proposed § 24.11, the bank's asset size and the percent of its unimpaired capital and surplus invested are factors in determining whether an investment in a CDC or CD project is eligible for self-certification. Specifically, the proposed rule requires that no prior, written OCC approval was needed for investments in CDCs and CD projects made by banks with $100 million or less in assets in amounts up to 5 percent of their unimpaired capital and surplus, or made by banks with assets of more than $100 million in amounts up to 2 percent of their unimpaired capital and surplus.

Some commenters suggested that the OCC revise the rule to permit banks with assets of up to $150 million to self-certify investments in CDCs and CD projects up to 5 percent of their capital and surplus. A commenter further suggested that small banks should not be treated differently than large banks in the self-certification process.

The OCC has proposed this self-certification process based on its 30-year experience with national banks making investments in CDCs and CD projects. It is part of the OCC's effort to identify ways to encourage more bank investments in community development initiatives in a manner that does not endanger banks' safety and soundness. The OCC also developed a streamlined approval process to help small banks, in particular, that had been limited in how much they could invest in CDCs and CD projects by the per project limit of 2 percent of unimpaired capital and surplus.

The OCC considered the commenters' suggestions, particularly those which indicated that increasing the threshold asset size of adequately capitalized banks to self-certify their CDC or CD-project investments would facilitate additional community development investments. In response, the OCC has raised the self-certification threshold to $250 million, which the OCC believes is a more appropriate threshold to define small banks for regulatory and supervisory purposes under this rule. Because this threshold asset size represents approximately 83 percent of the national bank population, the OCC believes that many small banks will benefit by the increase in the threshold. Accordingly, the final rule permits banks with up to, and including $250 million in assets to self-certify their investments up to 5 percent of unimpaired capital and surplus, if they meet the other factors under § 24.11(a).

The OCC also considered the appropriate maximum dollar investment that could be made by banks with over $250 million in assets without prior written OCC approval. The proposed rule permitted those investments made by banks with assets greater than the threshold asset size, up to 2 percent of their unimpaired capital and surplus. Upon further consideration, and review of the comments received, the OCC became concerned that a bank could make a multi-million dollar commitment in a CDC or CD project that would result in a large concentration of the bank's resources in one CDC or CD project. The OCC's prior approval of very large bank investments would help to ensure that there is review of local capacity to absorb major dollar volume investments and review for any safety or soundness concerns regarding the bank's CDC or CD-project investment.

The final rule establishes a maximum dollar project limit of $10 million for bank investments in CDCs and CD projects under the self-certification

process. A bank with assets greater than $250 million may self-certify CDC and CD-project investments in amounts that do not exceed 2 percent of its unimpaired capital and surplus, or $10 million, whichever is less. Such a bank is required to seek OCC approval of its investments that exceed the lesser of 2 percent of its unimpaired capital and surplus or $10 million.

Bank Condition

Under proposed § 24.11, another factor that the OCC will consider in determining whether an investment in a CDC or CD project is eligible for self-certification is the bank's condition. A bank with a composite rating of 3, 4 or 5, under the Uniform Financial Institutions Rating System, that is operating under an informal or formal enforcement action, or that is not adequately capitalized, is not eligible for self-certification. A commenter questioned whether it is legal for the OCC to apply safety and soundness tests to bank investments in CDCs and CD projects if the amounts of the investments are less than 5 percent of the bank's capital and surplus. In addition, a few commenters suggested that an adequately capitalized bank, with an "improving" composite rating of 3, or a bank that is covered by an informal enforcement action, should be allowed to notify the OCC prior to making an investment rather than having to obtain prior written approval.

The statute at 12 U.S.C. 24 (Eleventh) does not specify safety and soundness as a factor. However, the OCC has broad authority and responsibility under the national banking statutes to oversee the safety and soundness of any activity conducted by a national bank. Consequently, because participation in this program is only permissible as a result of Section 24 (Eleventh) and may entail varying degrees of risk, the OCC will require prior review and written approval of an investment by a bank with a composite rating of 3, 4 or 5, a bank that is covered by a formal enforcement action, or a bank that is not adequately capitalized.

Based on the commenters' suggestions, the final rule under § 24.11(b)(2) permits certain adequately capitalized banks with composite ratings of 3, with improving trends, to request authority to self-certify their investments. These banks may submit a letter to the OCC requesting approval to self-certify their investments in CDCs and CD projects consistent with the other self-certification requirements of the final rule. In addition, the final rule removes the requirement for prior OCC approval of investments made by healthy, 1 or 2-rated banks that are covered by informal enforcement actions.

Expedited Approval of Investments

A commenter suggested that the OCC should establish a process to expedite the approval of bank investments, in particular, investments in multi-bank CDC and CD projects in which other banks already have received OCC approval.

As a result of this comment, the final rule under § 24.11(d)(3) includes a process for the expedited approval of investments in CDCs and CD projects that already have been approved by the OCC as investments through either the investment proposal process or the self-certification process for a different national bank. The OCC has used this expedited approval process for the past three years and has found it successful. Adopting this process is a technical change to the rule that reduces the paperwork burden for some banks that, in the proposed rule, would have been required to submit investment proposals for prior OCC approval.

F. Section 24.13 Eligible Structures and Activities

Limited Partnership Investments

Under proposed §§ 24.13(b)(4) and 24.13(c)(2), a bank could self-certify its limited partnership investment if the partnership supports one or more projects that qualify for the federal low-income housing tax credit program and is managed by a nonprofit general or co-general partner. Some commenters suggested that the final rule permit the self-certification of investments in limited partnerships managed by a for-profit subsidiary of a nonprofit corporation because this is permitted under the Internal Revenue Service (IRS) requirements for federal low-income housing tax credits.

Based on these comments, the final rule at §§ 24.13(a)(4), 24.13(b)(1)(v), and 24.13(b)(2)(ii) permits banks to self-certify those investments in limited partnerships that are managed by a for-profit company that is a subsidiary of a nonprofit organization that qualifies under 26 U.S.C. 501 of the Internal Revenue Code as a 501(c)(3) or 501(c)(4) corporation. The final rule provides that the for-profit subsidiary must be owned by one or more 501(c)(3) or 501(c)(4) nonprofit organizations that materially participate in the development and operation of the partnership's projects, and must be considered a qualified organization eligible for federal low-income housing tax credits.

Under proposed §§ 24.13(b)(4) and 24.13(c)(2), a bank could self-certify its limited partnership investment if the partnership supported one or more projects qualifying for the federal low-income housing tax credit program that are located within the state in which the bank is located. Three commenters suggested permitting a self-certified investment in a limited partnership that operates outside the state in which the bank is located.

The OCC believes that banks will have few problems in determining the public welfare requirements for self-certification when the project is within the area or state where they operate. The OCC's review is needed when the target areas of limited partnerships are regional and nationwide, and associated questions regarding the structure of the investment, community involvement, the quality of the proposed general partner, and limits on liability become more difficult. Accordingly, no change has been made in the rule, and bank investments in limited partnerships operating outside the state in which the bank's headquarters office is located require prior written approval.

List of Structures and Activities

Under proposed §§ 24.13(b) and 24.13(c), the OCC provides a list of investment structures and activities eligible for self-certification. Some commenters suggested that those investments should include investments in wholly owned subsidiaries, community development loan funds, and community development credit unions, as well as investments involving loan guarantees. A commenter asked that the OCC clarify whether, if a CDC or CD-project investment involves loans to small businesses, the bank should consider those loans to be nonbankable.

The OCC has considered these comments. Under proposed § 24.13(c)(1)(ii), a CDC or community-based development organization could provide loan guarantees for small businesses, including minority-owned small businesses in targeted governmental-designated redevelopment areas. The OCC considers appropriate guarantees for self-certification to be no greater than 75 percent of the amount of a loan, and the final rule under § 24.13(b)(ii) provides this clarification. Furthermore, the proposed rule in § 24.4(a) discussing permitted welfare investments, indicates that any type of financing, including loans provided by a CDC or CD project to small businesses should be nonbankable. This section is unchanged in the final rule.

The list of eligible structures and activities in the final rule under § 24.13(a) and (b) provides guidance for banks that wish to self-certify their investments. The list is not intended to be all-inclusive and does not imply that the OCC would not consider or approve any other investment structure or activity. For example, bank investments in community development banks or community development financial intermediaries are investments that the OCC expects to consider for banks that submit investment proposals.

Finally, a few commenters suggested that the OCC adopt a specific schedule for revising the regulation from time to time, to add new CDC and CD-project structures and activities eligible for the self-certification process. Proposed § 24.13(a)(2) indicated that the OCC will propose revisions to the rule, from time to time, to add new CDC and CD-project structures and activities eligible for self-certification. Since the self-certification process will be new to banks as well as to the OCC, the OCC will review how well the self-certification process is working and will reconsider threshold and investment limits and other aspects of the rule periodically. However, the OCC does not believe that a set schedule is appropriate. All reference to the timing of revisions has been deleted from the final rule.

G. OCC Approval/Disapproval of Investment Proposals

Investment Amounts Requiring Approval

Under proposed § 24.11(b)(3), a bank must request the OCC's prior approval of any CDC or CD-project investment that would cause its aggregate investments in all CDCs or CD projects to exceed 5 percent of its unimpaired capital and surplus. One commenter suggested that any "single" investment which exceeds 5 percent of a bank's unimpaired capital and surplus also should be subject to OCC review.

Based on this comment, the OCC has revised this section. In the final rule, § 24.11(b)(1)(iii) provides that a bank that plans to make one or more investments in a CDC or CD project, that would cause the bank's aggregate investment in one or all CDCs and CD projects to exceed 5 percent of its unimpaired capital and surplus, must seek prior OCC approval.

Structures and Activities Requiring Prior OCC Approval

Under proposed § 24.11(b)(4), banks must seek prior OCC written approval for certain types of investments in CDCs and CD projects. As indicated earlier, some commenters suggested that banks be permitted to self-certify other investment structures, for example community development loan funds, community development credit unions, or limited partnerships managed by for-profit general partners.

This requirement is located at § 24.11(b)(1)(iv)(D) of the final rule. After careful consideration, the OCC has determined not to change the approach contained in the proposed rule. Certain investment structures and activities require prior review and approval. Examples of organizational structures that would require prior review include bank investments in community development banks, community development financial intermediaries, and in community development limited partnerships that are managed by a for-profit general, or co-general partner that is not a subsidiary of a qualifying nonprofit organization. The OCC may revisit this issue after it has gained more experience with these investments.

Further, the OCC has added a new § 24.11(b)(1)(iv)(E). This section refers specifically to CDC and CD-project activities that require prior written OCC approval. Examples of activities requiring approval include critical services or job creation that primarily benefit low- and moderate-income persons and families.

OCC's Conditions in Granting Approval

Under proposed § 24.11(e)(5), the OCC may impose one or more conditions in connection with its approval of a CDC or CD project. One commenter suggested that the rule should list the conditions that usually are included in the opinion letters to national banks.

The OCC includes conditions in the opinion letters to national banks approving or disapproving their CDC or CD-project investments. These conditions generally state the public welfare investment requirements under § 24.4. Further, as indicated in the proposed rule, under § 24.11(e)(5), the OCC may impose other conditions on a case-by-case basis in connection with its approval of a CDC or CD-project investment, especially when those investment structures and activities are unique. For example, if a bank makes an equity or debt investment in a CDC that extends loans, the bank should be aware that the CDC is a creditor covered by the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), and the CDC may also be subject to other state and federal laws. Also, the OCC may ask the bank to provide reports about its investment in the CDC or CD project, including the financial status, activities, and accomplishments of the CDC or CD project.

H. Effect of CDC and CD-Project Investments on CRA Ratings

Almost half of the commenters requested that the OCC indicate how a bank's investments in CDCs or CD projects will affect its CRA rating of performance. A few commenters were concerned that permitted public welfare investments qualifying under CRA should include investments in CDCs and CD projects that might not necessarily benefit a bank's community, for example in CDCs and CD projects that operate statewide.

The OCC currently considers a bank's investment in a CDC or CD project to affect positively its CRA performance rating to the extent that the investment helps to meet the credit, investment and other needs of the bank's community. Additionally, some CRA credit is given for investments outside the bank's community when the investment augments or compliments an overall CRA program that is directly responsive to the credit needs in an institution's delineated community. Banks should consider this in planning CDC and CD-project investments. The OCC also notes that bank investments in CDCs and CD projects and other investments are being reviewed by the federal financial regulatory agencies under the President's CRA reform initiative.

I. Calculation of Calendar Versus Work Days

Under proposed § 24.11(e), the OCC would approve or disapprove an investment proposal within 30 days of receipt and would provide the bank with written notice indicating its receipt of the proposal. The OCC could extend the 30-day review period, and after notification of the extension, a bank could proceed with the investment only upon the OCC's written approval.

A commenter suggested that the final rule should eliminate the OCC's authority to extend the 30-day review period and the requirement that the bank receive explicit written approval from the OCC before investing. Another commenter suggested that the final rule should discuss how the OCC would advise banks of an investment proposal's status, when the 30-day response would occur, and whether the rule intends 30-calendar or working days as the time frame for OCC's response.

As indicated in the proposed rule, banks submitting investment proposals receive two written notices, one acknowledging the OCC's receipt of the bank's proposal and the other an OCC

opinion letter approving or disapproving the investment. The bank should expect to receive the opinion letter from the OCC within 30-calendar days of the date the OCC receives the bank's investment proposal. The OCC may extend this 30-calendar-day period for unusual investment proposals if, for example, the proposed investment is novel or precedent-setting, requires extensive additional consultation with the bank or OCC policy review, poses unlimited liability or other safety or soundness concerns for the bank, or conflicts with other related legal requirements.

Based on these comments, the final rule indicates calendar or working days when describing the time frames in OCC's schedule. The OCC will compute this time consistent with 12 CFR 19.12. Generally, if 10 days or less, the rule shall mean working days. If more than 10 days, the rule shall mean calendar days. Also, if the last day of the calendar-day period falls on a Saturday, Sunday, or federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday or federal holiday regulations.

Under § 24.11(e) (2) and (3) of the final rule, the OCC will complete its review and approval of bank investments in CDCs and CD projects within 30-calendar days of the date the OCC receives the bank's proposal, unless otherwise notified. In addition, the OCC has added a new paragraph § 24.11(d)(3) regarding bank requests to make follow-up investments in CDCs and CD projects that have been approved previously for other national banks. Under the final rule, the OCC will complete its review within five working days of the date it receives the bank's request. Further, the OCC has added a new paragraph under § 24.11(a)(3) stating that the OCC will notify the bank of its receipt of the letter of self-certification and may include other pertinent information.

J. Additional Definition Changes

Under proposed § 24.2(b), a definition of "bankable" describes loans and investments that differ from those that can be made under the rule. The OCC has deleted the definition of "bankable" in the final rule. This will clarify that banks should continue their practice of making regular bankable loans to low- and moderate-income persons and small businesses that are consistent with their flexible underwriting standards in the ordinary course of business. This may include, for example, regular bankable loans with credit enhancements or that involve a flexible interpretation of an applicant's credit history.

In response to a comment asking for clarification about what is meant by "nonprofit community-based development corporations," the OCC has added a new definition of a "community-based development corporation." Under new § 24.2(f), a "community-based development corporation" means an organization that qualifies under the Internal Revenue Code (26 U.S.C. 501) as a 501(c)(3) or 501(c)(4) corporation.

In response to a comment asking the OCC to clarify the definition of a "real estate limited partnership," the OCC has added a definition of a "community development limited partnership" to explain the special real estate limited partnership permitted under the rule. Under § 24.2(d), a "community development limited partnership" is a single-purpose, or master, limited partnership, formed under state rules governing limited partnerships, the primary purpose of which is the provision of housing for low- and moderate-income persons, or other community and economic development initiatives considered permitted public welfare investments under § 24.4(a). The community development limited partnership must be located in a particular area, including a low- and moderate-income area, underserved rural community, or governmental-designated redevelopment area, such as within a neighborhood, town, city, county, or state.

Finally, the OCC includes a new definition for "unimpaired capital and surplus" for clarification. Under new § 24.2(m), a bank's unimpaired capital and surplus, for purposes of the rule, means the bank's capital and surplus as defined in 12 CFR 3.100.

IV. Other Changes

To provide clarity and consistency, the OCC has made various technical changes. Among those are the OCC's final rule modifies the proposed rule regarding the information requested in a bank's notice of self-certification and investment proposal. The final rule, at § 24.11 (a)(2), clarifies what should be included in the bank's self-certification notice for investments in CDCs and CD projects to permit appropriate supervisory monitoring. Also, § 24.11(d)(2) clarifies what should be included in the bank's investment proposal for investments that require prior written OCC approval, such as the type of bank investment in the CDC or CD project (equity or nonbankable debt investment).

V. Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. All banks, especially small banks, should benefit to some degree under this final rule. This final rule will permit larger investments in CDCs and CD projects and also enable banks to make investments on an expedited basis. This should improve the long-term health of the participating banks' market areas. The overall impact of the rule will not be significant, regardless of bank size.

VI. Effective Date

This final rule is effective on December 31, 1993. This expedited effective date is adopted because this final rule grants an exemption and relieves a restriction.

National banks that meet certain criteria will be exempted from submitting certain CDC and CD project investments for prior OCC review and approval. Instead of an investment proposal process, the final rule permits banks to submit a brief self-certification of compliance notice to the OCC. This final rule also raises the single project and aggregate limits for national bank investments in CDCs and CD projects above current limits, thereby relieving an existing restriction.

This final rule does not impose new restrictions or prohibit any currently permissible activity. Consequently, national banks will not be adversely affected by the immediate effective date.

Finally, delaying the effective date of this final rule would be contrary to the public interest. This final rule will promote economic growth and investment in low- and moderate-income areas, underserved rural communities, and governmental-designated areas.

This final rule encourages and facilitates national banks to address community financing needs by investing in CDCs and CD projects with community partners. The final rule allows national banks to make equity and special debt investments in CDCs and CD projects that go beyond regular bank lending to provide affordable housing, services, and jobs for low- and moderate-income people and to promote community development efforts designed to help small businesses, including minority-owned small businesses.

VII. Executive Order 12866

It has been determined that this document is not a significant regulatory

action as defined in E.O. 12866. The final rule imposes only minimal costs and burdens and is necessary to ensure bank safety and soundness. The overall impact of the rule will not be significant, regardless of bank size.

VIII. Paperwork Reduction Act

The information requirements under this final rule were submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on these requirements should be sent to the Comptroller of the Currency, Legislative, Regulatory and International Activities Division, Attention: 1557–0194, 250 E Street, SW., Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1557–0194), Washington, DC 20503. The information required under this final rule is outlined in 12 CFR 24.11. This information is needed to promote the safety and soundness of national banks and compliance with law. It will be used to identify banks making CDC and CD-project investments, to plan examination and supervision of the investments, and to conduct prior review of investments most likely to raise legal, policy, or safety and soundness concerns.

The OCC estimates that 400 for-profit institutions will file investment proposals or self-certification letters annually. The estimated average annual burden will be approximately 1.9 hours per participating bank. The estimated average annual burden per bank is one hour, on average, for a letter, to eight hours, on average, for a complete investment proposal, depending on whether the investment requires prior review and approval or only a letter of self-certification. The estimated total annual reporting burden for 12 CFR part 24 is 757 burden hours.

List of Subjects

12 CFR Part 7

Credit, Insurance, Investments, National banks, Reporting and recordkeeping requirements, Securities, Surety bonds.

12 CFR Part 24

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, chapter I of title 12, of the Code of Federal Regulations is amended as follows:

PART 7—[AMENDED]

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

Authority: 12 U.S.C. 1 *et seq.*, 93a.

§ 7.7480 [Removed]

2. Section 7.7480 is removed.

3. A new part 24 is added to read as follows:

PART 24—COMMUNITY DEVELOPMENT CORPORATION AND PROJECT INVESTMENTS

Sec.

24.1. Authority, purpose, policy, and OMB control number.
24.2 Definitions.
24.4 Community development corporation and community development project investments.
24.11 Community development corporation and community development project investment self-certification and approval.
24.13 Structures and activities eligible for the self-certification process.
24.21 Examination, records, and remedial action.

Authority: 12 U.S.C. 24 (Eleventh), 93a, 161, 481 and 1818.

§ 24.1 Authority, purpose, policy, and OMB control number.

(a) *Authority.* The requirements contained in this part are authorized under 12 U.S.C. 24 (Eleventh), 93a, 161, 481 and 1818.

(b) *Purpose.* This part implements 12 U.S.C. 24 (Eleventh), which permits national banks to make equity and special debt investments in community development corporations (CDCs) and community development projects (CD projects). Section 24 (Eleventh) permits national banks to make these investments, consistent with safe and sound banking practices, even though they would not normally be permitted under the National Bank Act (12 U.S.C. 1 *et seq.*) because they promote the public welfare, and to carry these investments as "other assets." This part provides the standards that will be used by the Office of the Comptroller of the Currency (OCC) to determine whether an investment is designed primarily to promote the public welfare and sets forth the prior approval and self-certification procedures that apply to CDC and CD-project investments.

(c) *Policy.* (1) The OCC encourages each national bank to make efforts, consistent with its capabilities and condition, to address local community development needs in low- and moderate-income areas, underserved rural areas and governmental-designated redevelopment areas, through CDC and CD-project investments that primarily benefit low- and moderate-income people and small businesses, including minority-owned small businesses, and to promote economic growth through the provision of housing, services, or jobs to low- and moderate-income persons and families, consistent with the safe and sound operation of the bank. The OCC believes that one effective way for many national banks to address such needs is by making CDC and CD-project investments.

(2) CDC and CD-project investments are equity investments, nonbankable loans or lines of credit that supplement a bank's other lending and investing programs to help meet credit, investment or other community needs. CDC and CD-project investments are not regular bankable loans or investments. Under this part, national banks may undertake community development activities, such as equity investments in real estate, equity and special debt investments in small, new companies, or the renovation of neighborhood commercial or residential properties, only if they primarily serve the public welfare, as described in § 24.4(a).

(d) *OMB control number.* The collection of information requirements contained in this part were approved by the Office of Management and Budget under OMB control number 1557–0194.

§ 24.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Adequately capitalized.* A national bank is adequately capitalized if the bank meets the definitional requirements for "well-capitalized" or "adequately capitalized" in § 6.4(b) of this chapter.

(b) *Community development corporation (CDC)* means a corporation established by one or more financial institutions, or by financial institutions and other investors or members, to develop housing, foster economic growth and revitalization, create small businesses, including minority-owned businesses, and support other community development initiatives considered permitted public welfare investments under § 24.4(a). A CDC operates within a defined neighborhood or area, including low- and moderate-income areas, underserved rural communities, and governmental-designated redevelopment areas, such as within towns, cities, counties, or states.

(c) *Community development corporation subsidiary (CDC subsidiary)* means a CDC that is a subsidiary of a national bank and that is majority-owned by that national bank, or a CDC that is majority-owned by a national bank and its affiliates.

(d) *Community development limited partnership* means a single-purpose or master limited partnership, formed under state statutes governing limited partnerships, to provide housing for low- and moderate-income persons or families or other community and economic development initiatives considered permitted public welfare investments under § 24.4(a). These community development limited partnerships operate in a particular area, including a low- and moderate-income area, underserved rural community, or a governmental-designated redevelopment area, such as within a town, city, county, or state.

(e) *Community development project (CD project)* means a specific project in a particular location or area, including a low- and moderate-income area, underserved rural community, or a governmental-designated redevelopment area, such as within a neighborhood, town, city, county, or state, whose purpose is to foster economic improvement of that area, and other community development initiatives considered permitted public welfare investments under § 24.4(a). A CD-project investment funds the development or renovation of one or more specified residential or commercial properties in a manner consistent with community and government revitalization plans. CD-project investments also include nonbankable loans or special debt investments to support community-based development organizations under § 24.2(f), and special debt or other investments in community development banks and other community development financial intermediaries.

(f) *Community-based development corporation* means a nonprofit organization that qualifies under 26 U.S.C. 501 of the Internal Revenue Code as a 501(c)(3) or 501(c)(4) organization.

(g) *Low- and moderate-income areas or communities* means areas where at least 51 percent of the residents are low- and moderate-income persons and families.

(h) *Low- and moderate-income persons and families* means individuals and families whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary of the U.S. Department of Housing and Urban Development, with adjustments for smaller and larger families. In conjunction with this term, the area involved should be determined in the same manner as an area is determined for purposes of lower-income housing assistance under 42 U.S.C. 1437f.

(i) *Minority-owned small businesses* means small businesses under § 24.2(l) that are majority-owned by members of minority groups or by women.

(j) *Nonbank community involvement in the CDC or CD project.* Nonbank community involvement means:

(1) In all CDCs, community-based development organizations, and community development banks or community development financial intermediaries, the affected primary beneficiaries of the organization's programs and activities are included on its board of directors and are involved in its decision-making. The organization's board of directors should include representatives with expertise in small business development, including minority-owned small business development, or low- and moderate-income housing, whichever is applicable, and public officials of the community to demonstrate community and government support for the organization's programs and activities; or

(2) In a CD project, the affected primary beneficiaries of the CD project and public officials have endorsed and indicated support for the CD project. A CD project should demonstrate that it addresses a community need that the private market is not addressing; has community-based support (including support from grass-roots community representatives and representatives with expertise in small business development, including minority-owned small business development, or low- and moderate-income housing, whichever is applicable); and has support from local or state governments (including financing, endorsements or approvals).

(k) *Significant risk to the deposit insurance fund* is present whenever there is a high probability that any insurance fund administered by the Federal Deposit Insurance Corporation could suffer a loss.

(l) *Small businesses* means businesses that are smaller than the maximum size eligibility standards established by the Small Business Administration (SBA) for:

(1) The Small Business Investment Company and Development Company Programs, which are set forth in 13 CFR 121.802(a)(2); or

(2) The SBA section 7(a) loan and guarantee program which is set forth in 13 CFR 121.601.

(m) *Unimpaired capital and surplus* has the same meaning as capital and surplus under 12 CFR 3.100.

§ 24.4 Community development corporation and community development project investments.

(a) *Permitted public welfare investments.* Subject to § 24.11, a national bank may make equity or debt investments (a loan or line of credit that is not bankable) in a CDC or CD project that is designed primarily to promote the public welfare. The OCC will consider a CDC and CD-project investment to be primarily designed to promote the public welfare, if all of the following criteria are met:

(1) The investment primarily benefits low- and moderate-income persons and families (such as by providing housing, services, or jobs) or small businesses, including minority-owned small businesses;

(2) The investment addresses community development needs not met by the private market in one or more communities served by the bank, including, for example, the needs of low- and moderate-income areas; underserved rural communities, or governmental-designated redevelopment areas, such as within a town, city, county, or state;

(3) There is nonbank community involvement in the CDC and CD project, as described under § 24.2(j), indicating that the affected primary beneficiaries and representatives of local or state government have endorsed and demonstrated support for the CDC or CD-project activities; and, for all CDCs, community-based development organizations, and community development banks or community development financial intermediaries, such involvement is demonstrated by the composition of the organization's board of directors; and

(4) The profits, dividends, tax credits and other distributions from equity investments, or interest income from debt investments received by the bank from the CDC or CD-project investment are devoted to activities that primarily promote the public welfare as determined by the OCC, and, in the case of a for-profit CDC subsidiary, are reinvested in the CDC during its first three years of operation.

(b) *Investment limits.* A national bank's aggregate investments under this part may not exceed 5 percent of its unimpaired capital and surplus, unless the OCC determines, by order, as described in § 24.11 that the higher amount will pose no significant risk to the deposit insurance fund and the bank is adequately capitalized. In no case may a bank's investments exceed 10 percent of its unimpaired capital and surplus.

(c) *Accounting for CDC and CD-project investments.* The instructions for Consolidated Reports of Condition and Income published by the Federal Financial Institutions Examination Council (FFIEC Call Report Instructions) provide guidance for regulatory accounting and reporting for investments in subsidiaries and similar entities. A copy of the FFIEC Call Report Instructions may be obtained from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. The following guidance is provided for national bank investments in CDC and CD-project investments consistent with the FFIEC Call Report Instructions:

(1) A bank's investments in CDCs and CD projects typically involve a limited ownership percentage and are not material. As a result, these investments may be recorded as "other assets" at cost.

(2) If the CDC or CD project meets the definition of a significant majority-owned subsidiary in the FFIEC Call Report Instructions, the bank's investment should be consolidated generally on a line-by-line basis.

(3) If the investment is a partnership, joint venture, or unconsolidated subsidiary over which the bank exercises significant influence, the bank's interest should be presented as an investment in a joint venture or associated company and accounted for under the equity method of accounting.

(d) *Limited liability.* A national bank shall not make a CDC or CD-project investment if that investment would expose the bank to unlimited liability.

(e) *CDC and CD-project policies.* The bank's board of directors shall manage their CDC and CD-project investments in a prudent manner consistent with safe and sound banking practices. Prudent bankers should maintain policies governing CDC or CD-project investments that address such matters as regulatory compliance, evaluation and achievement of CDC and CD-project goals, and effective CDC or CD-project management.

§ 24.11 Community development corporation and community development project investment self-certification and approval.

(a) *Investments not requiring prior review.* (1) Any investment where prior written OCC approval is not required under § 24.11(b) may be made without prior notification to, or approval by, the OCC. However, within 10 working days after the investment is made, the national bank shall submit a letter of self-certification to the Director, Community Development Division, The Office of the Comptroller of the Currency, Washington, DC 20219 (Community Development Division).

(2) The bank's letter of self-certification must attest that the investment meets the public welfare requirements of this part (§ 24.4), and is not subject to prior OCC review. Further, the letter of self-certification must include:

(i) The name of CDC or CD project and the date the investment was made;

(ii) The type of investment (equity or nonbankable debt), the eligible activities that will be undertaken, and the eligible investment structure (from the list of eligible activities and structures under § 24.13);

(iii) The bank's total investment in the CDC or CD project, and the bank's aggregate investment commitments in all CDCs or CD projects, to date; and

(iv) The applicable percentage of unimpaired capital and surplus for the bank's total investment in CDCs or CD projects, and the bank's aggregate investment commitments in all CDCs or CD projects, to date.

(3) Within five working days after receiving the bank's letter of self-certification, the OCC will provide a written notice to the bank to indicate the date of its receipt of the bank's letter and also may include other related information.

(b) *Investments requiring prior written OCC approval.* (1) A national bank shall submit an investment proposal for any planned CDC or CD-project investment to the OCC for prior review, if any of the following conditions in paragraph (b)(1) of this section exist:

(i) The national bank:

(A) Has a composite rating of 3, 4 or 5 under the Uniform Financial Institutions Rating System; or

(B) Is covered by a formal enforcement action; or

(C) Is not adequately capitalized;

(ii) The national bank has more than $250 million in assets and proposes to make a single or subsequent CDC or CD-project investments that will total an amount that exceeds the lesser of 2 percent of its unimpaired capital and surplus, or $10 million;

(iii) The national bank proposes to make CDC or CD-project investment that would cause its aggregate investment in one or all CDCs or CD projects to exceed 5 percent of its unimpaired capital and surplus, or proposes subsequent investments over 5 percent; or

(iv) The proposed CDC or CD-project investment falls in one of the following five categories:

(A) The investment is in a new CDC subsidiary or is in a CDC controlled by one national bank and its affiliates;

(B) The investment involves the transfer of properties, carried on the bank's books as "other real estate owned" (OREO), to a CDC in which the bank has or will have an ownership interest (which the OCC will consider only under limited circumstances as stated in § 24.11(e)(1)(iii));

(C) The investment provides funds for projects in a state outside the state where the bank's headquarters office is located;

(D) The investment will be in a structure other than those listed in § 24.13(a); or

(E) The investment will support an activity other than those listed in § 24.13(b).

(2) The OCC will consider, on a case-by-case basis, whether an adequately capitalized bank that has a composite rating of 3, with improving trends under the Uniform Financial Institutions Rating System can self-certify its investment in a CDC or CD project, consistent with the other requirements of this part. Banks seeking such treatment may submit a letter to the Community Development Division requesting eligibility to self-certify their proposed investments in accordance with § 24.11(a).

(c) *Optional review.* A national bank may request OCC review and approval of investment proposals for investments not covered under § 24.11(b).

(d) *CDC or CD-project investment proposal.* (1) A national bank shall submit an investment proposal for any investment covered in § 24.11(b) to the Community Development Division.

(2) A national bank shall include in its CDC or CD-project investment proposal a discussion of:

(i) The amount and type of bank investment in the CDC or CD project (equity or debt);

(ii) How the bank's proposed CDC or CD-project investment meets the requirements of a permitted public welfare investment, as described under § 24.4;

(iii) The investment structure and activities of the CDC or CD project; and

(iv) The bank's per project investment amount for the single proposed investment and its aggregate investments, to date, including the applicable percentage of the bank's unimpaired capital and surplus for the single and aggregate investments.

(3) The OCC may expedite the approval of a proposed investment by a bank in a CDC or CD project previously approved for another national bank by the OCC through the investment proposal or self-certification process.

(i) The national bank requesting this expedited approval should submit a

one-page letter to the Community Development Division that includes:

(A) The name of the bank proposing to make the investment, and the name of the national bank and CDC or CD-project investment that previously received the opinion letter (from the investment proposal process) or the written response (from the self-certification process);

(B) The bank's proposed total investment in the CDC or CD project, and the bank's aggregate investment commitments in all CDCs or CD projects, to date;

(C) The applicable percentage of unimpaired capital and surplus for the bank's proposed total investment in the CDC or CD project, and the bank's aggregate investment commitments in all CDCs or CD projects, to date; and

(D) A statement that the bank has reviewed the opinion letter from the investment proposal process, and any conditions therein, or the written response from the self-certification process, and any statements therein, provided by the OCC to the national bank that received the previous opinion letter or written response and agrees to abide by the conditions or statements contained therein.

(ii) Unless otherwise notified by the OCC, the bank may make the proposed follow-up CDC or CD-project investment after seven working days from the date the OCC receives the bank's investment proposal. Within five working days of receiving the bank's request, the OCC will provide written notice to the bank to indicate the date of its receipt of the bank's request and approval or disapproval of the CDC or CD-project investment.

(e) *OCC approval of investments.* (1) The OCC may consider any information available in its decisions regarding CDC and CD-project investment proposals. The OCC generally will consider factors such as:

(i) Whether the proposal meets the requirements of this part;

(ii) Whether the investment is consistent with the safe and sound operation of the bank;

(iii) If an OREO transfer is proposed, whether the primary public welfare benefits of the transfer are demonstrated; whether all supervisory concerns regarding the transfer are addressed; and whether other factors the OCC may consider relevant are addressed; and

(iv) Whether the investment is consistent with other requirements and policies of the OCC.

(2) Unless otherwise notified by OCC, the bank may make the proposed CDC or CD-project investment after 30-calendar days from the date the OCC receives the bank's investment proposal. Within five working days of its receipt of the bank's investment proposal, the OCC will provide written notice to the bank to indicate the date of its receipt of the proposal.

(3) The OCC, by notifying the bank, may extend the 30-calendar-day period. If so notified, the bank may make the investment only with the written approval of the OCC.

(4) Notwithstanding § 24.11(e)(2), a bank must obtain explicit written approval from the OCC for any CDC or CD-project investment that causes a bank's single or aggregate investments under this part to exceed 5 percent of its unimpaired capital and surplus, and for any subsequent larger investment in excess of that amount. The OCC will approve investments only for adequately capitalized banks as defined in § 24.2(a) and only those that do not pose a significant risk to the deposit insurance fund as defined in § 24.2(k).

(5) The OCC may impose one or more conditions in connection with its approval of a CDC or CD-project investment.

§ 24.13 Structures and activities eligible for the self-certification process.

This section describes CDC and CD-project organizational structures and activities that are referred to in § 24.11(b)(4) (iv) and (v). If consistent with other requirements of §§ 24.4 and 24.11, a bank may make these investments without prior notice to, or approval by the OCC.

(a) *Eligible structures.* The structures listed in this paragraph (a) are eligible structures for the self-certification process under § 24.11(a):

(1) A for-profit or nonprofit multi-bank CDC, provided the CDC is not a CDC subsidiary as defined in § 24.2(c);

(2) A CDC, either for-profit or nonprofit, with bank and or nonbank investors, that meets the requirements of this part, established by formal action of a state or a general unit of local government or by government agencies delegated that authority by action of the state or local government;

(3) A community-based development organization that undertakes permitted public welfare investments consistent with § 24.4(a); and

(4) A community development limited partnership:

(i) Operating only in the one state where the bank's headquarters office is located that qualifies for the federal low-income housing tax credit program and is managed by a nonprofit general or co-general partner that qualifies under 26 U.S.C. 501 of the Internal Revenue Code as a 501(c)(3) or 501(c)(4) organization, or by a for-profit general or co-general partner that meets the following characteristics:

(A) Is a subsidiary of one or more 501(c)(3) or 501(c)(4) nonprofit organizations that materially participates in the development and operation of the partnership's project(s); and

(B) Is a qualified organization eligible for federal low-income housing tax credits; and

(ii) Structured to limit the bank's liability to an amount not exceeding the bank's capital investment and any specific contingent liabilities, to avoid bank participation in the control of the business of the partnership, and to reflect steps taken by the bank to limit strictly its activities within the limited partnership, consistent with state law, so that it clearly maintains its limited partner status.

(b) *Eligible activities.* (1) Activities that are eligible for the self-certification process under § 24.11(a) and that may be undertaken through CDCs or community-based development organizations listed under paragraphs (a)(1) through (a)(3) of this section include:

(i) Acquiring, developing, rehabilitating, managing, and selling or renting housing designed primarily to benefit low- and moderate-income residents of the bank's community, or offering equity or debt financing, including loans, to promote such housing activities, if the financing is not bankable;

(ii) Providing equity financing, loans that are not bankable, or loan guarantees that are no greater than 75 percent of the loan amount for small businesses, including minority-owned small businesses, to stimulate economic development and job creation for low- and moderate-income persons and families in a low- and moderate-income area, underserved rural community, or governmental-designated redevelopment area;

(iii) Providing technical assistance services, credit counseling, community development research, and/or program development assistance for small businesses, including minority-owned small businesses, low- and moderate-income families and areas, or nonprofit community development corporations to help achieve community development goals;

(iv) Acquiring, developing, rehabilitating, managing, and selling or renting commercial or industrial properties, if:

(A) Each property is in a low- and moderate-income area, underserved

rural community, or governmental-designated redevelopment area and is occupied primarily by small businesses, including minority-owned small businesses;

(B) Each property is developed in accordance with a government plan for revitalization or development; and

(C) The private market is not addressing the development need; or

(v) Investing in one or more community development limited partnerships as a limited partner to support projects that qualify for the federal low-income housing tax credit program. These community development limited partnerships must be within the one state where the bank's headquarters office is located and managed by a nonprofit general or co-general partner, or by a for-profit general or co-general partner that is a subsidiary of one or more 501(c)(3) or 501(c)(4) nonprofit organizations, which materially participates in the development and operation of the projects, and that meets all of the criteria established for for-profit entities under the federal low-income housing tax credit program.

(2) Activities that are eligible under § 24.11(a) for the self-certification process and that may be undertaken by the community development limited partnerships described in paragraph (a)(4) of this section include:

(i) Equity investments in one or more low- and moderate-income housing project(s) qualifying for the federal low-income housing tax credit, provided the projects are located within the one state where the bank's headquarters office is located; and

(ii) Equity investments as a limited partner in one or more operating limited partnership(s) that are managed by nonprofit general or co-general partners, or by a for-profit general or co-general partner that is a subsidiary of one or more 501(c)(3) or 501(c)(4) nonprofit organizations, which materially participates in the development and operation of the projects, and that develop low- and moderate-income housing projects qualifying for the federal low-income housing tax credit, provided that the projects are within the one state where the bank's headquarters office is located.

§ 24.21 Examination, records, and remedial action.

(a) *Examination.* National bank CDC or CD-project investments are subject to the examination provisions of 12 U.S.C. 481.

(b) *Records.* Each national bank shall maintain in its files information adequate to demonstrate that it is in compliance with the requirements of this part.

(c) *Remedial action.* If the OCC finds that a CDC or CD-project investment is in violation of law or regulation, is inconsistent with the safe and sound operation of the bank, or poses a significant risk to the bank deposit insurance fund, the national bank shall take appropriate remedial action as determined by the OCC.

Dated: October 22, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 93–31387 Filed 12–21–93; 12:52 pm]

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Monday
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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reclassification of the Plant Pediocactus Sileri and Determination of Status for the Relict Darter and Bluemask Darter; Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Reclassification of the Plant Pediocactus Sileri (Siler Pincushion Cactus) From Endangered to Threatened Status

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) concludes that the plant Pediocactus sileri (Siler pincushion cactus) should be reclassified from endangered to threatened status under the Endangered Species Act of 1973 (Act), as amended. The change in classification reflects an improved understanding of the species' status and the fulfillment of reclassification criteria as stated in the Siler Pincushion Cactus Recovery Plan. Delisting is not justified at this time. Reclassification to threatened status will not alter most protections for this species under the Act. However, some collecting and malicious destruction protections provided to endangered plants by the Act's 1988 amendments have not been extended through regulation to threatened plants, and seeds of cultivated specimens of threatened plants may be sold without a permit, provided a statement of "cultivated origin" appears on their containers.

EFFECTIVE DATE: January 26, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Arizona Ecological Services State Office, 3616 West Thomas Road, suite 6, Phoenix, Arizona 85019.

FOR FURTHER INFORMATION CONTACT: Bruce Palmer (see **ADDRESSES**) at 602/379–4720.

SUPPLEMENTARY INFORMATION:

Background

Pediocactus sileri (Siler pincushion cactus) grows on gypsum soils in a scenic area of southwestern Utah and northwestern Arizona. When mature, this globose or cylindrical cactus is about 10–13 centimeters (cm) (4–5 inches (in)) tall and has spines that almost match the gray soil where it commonly occurs. The central spines, which are usually less than 3.2 cm (1.25 in) long, have a purplish or black tip when young and point upward. The flowers are yellow and appear in the spring. Plants may be single-stemmed or clustered.

Pediocactus sileri is found on gypsiferous clay to sandy soils apparently high in soluble salts (Hughes 1991). Plants occur on soils derived from the Moenkopi Formation. About 90 percent of known plants occur on the Shnabkaib Member of the formation (Gierisch 1989). The grayish Shnabkaib Member is composed of 65 percent siltstone, 25 percent gypsum, and 10 percent limestone and dolomite (Stewart et al. 1972). Most of the remaining plants are found on the Middle Red Member of the formation, which is a reddish siltstone with thin to thick layers of gypsum. Plants can be found growing on soil that ranges from shallow to 56 cm (22 in) deep (Gierisch 1981).

Pediocactus sileri populations occur in a variety of plant communities. Most commonly, the species is found in the Great Basin Desert Shrub Biotic Community. At one low elevation site, the surrounding vegetation is Mohave Desert Scrub. The higher elevation sites are located within the Great Basin Conifer Woodland and Plains, and the Great Basin Grassland (Hughes 1991). The species is found at elevations of 850–1,650 meters (2,800–5,400 feet).

When the species was listed as endangered in 1979 (44 FR 61786), the amount of habitat was unknown but presumed to be small. The total amount of occupied habitat remains unknown, but extensive surveys conducted by the Bureau of Land Management (BLM), Arizona Strip District (Hughes 1991), have documented the species on 17,000 hectares (ha) (42,100 acres (ac)) of habitat. The species will likely be found outside this area. The Moenkopi Formation covers approximately 134,000 ha (330,000 ac) in this area of the Arizona Strip; an unknown fraction of this substrate type is potential habitat for *Pediocactus sileri*.

At the time the plant was proposed for listing, fewer than 1,000 individuals were thought to exist (Phillips et al. 1979). Since that time many more plants have been discovered. *Pediocactus sileri* has a distribution typical of many plant species—a high density in some areas (Gierisch 1981, Hughes 1991) and a low density in others (Gierisch 1981; L. Hughes, BLM, St. George, Utah, pers. comm. 1988). Low density areas may support approximately 0.04–0.12 *P. sileri* plants per hectare (0.02–0.05 plants per acre) (L. Hughes, pers. comm. 1992). By contrast, the high density population at Warner Ridge contains 37–57 plants per hectare (15–23 plants per acre) (Gierisch 1989). A map prepared by BLM in 1988 shows three high density areas, widely scattered across the Arizona Strip. These populations ranged in number from 2,691 plants to 3,775 (an underestimate because all plants were not counted). The three dense populations occupy an area of about 1,700 ha (4,100 ac).

The majority of *Pediocactus sileri* habitat is managed by the Arizona Strip and Cedar City districts of BLM. Some habitat occurs on the Kaibab-Paiute Indian Reservation, but no surveys have occurred there. A small amount of habitat is privately owned.

The 1979 final rule to list *Pediocactus sileri* as endangered identified gypsum mining, off-highway vehicle (OHV) use, road construction, illegal collection, livestock grazing, construction of the proposed Warner Valley Power Plant and associated structures, and the inadequacy of regulatory mechanisms as threats to the species. The Service believed that the specialized soil type, small numbers of individuals, population disjunction, and possibly a restricted gene pool could have intensified adverse effects on *P. sileri* and its habitat. Since the species was listed, a number of recovery activities have occurred, including the completion of some management documents.

In 1985, the BLM established permanent *Pediocactus sileri* monitoring plots to collect demographic and phenological data and determine the status of the monitored populations. The BLM has reported these data annually to the Service and has most recently summarized them in Hughes (1991). Some data analysis has been done, but more sophisticated methods should be employed to determine the long-term viability of the monitored populations.

The Siler Pincushion Cactus Recovery Plan was finalized in 1986 (U.S. Fish and Wildlife Service 1986). The plan set forth the following five reclassification criteria—(1) known populations should be censused and mapped; (2) the BLM should establish monitoring plots that can be relocated and census these at least annually; (3) the BLM should develop an approved Habitat Management Plan (HMP), which includes steps to ensure the protection of the species; (4) the BLM should develop a Mineral Feasibility Report assessing the present and potential value of the habitat for mining of gypsum, selenites, and uranium; and (5) the BLM should administer mining claims within known populations, mitigate adverse effects, and initiate section 7 consultations when necessary. The necessary criteria for delisting are—

(1) demonstration of long-term population stability, (2) demonstration that reclassification criteria are suitable, (3) continued assurance of no mining or new claims in known habitat, and (4) implementation of actions identified in the HMP.

The Arizona Strip and Cedar City districts of the BLM finalized the *Pediocactus sileri* HMP in 1987 (U.S. Department of Interior (USDI) Bureau of Land Management 1987). Planned actions in the HMP included continuing monitoring studies, closing and signing the Warner Ridge/Beehive Dome area to OHVs, building an exclosure fence around a specific dense population, evaluating all surface-disturbing activities through the National Environmental Policy Act process, and placing raptor roost poles where small mammal herbivory is a problem.

In 1990, the Arizona Strip District and Dixie Resource Area (part of the Cedar City District) of the BLM completed their respective Resource Management Plans (RMPs) and Final Environmental Impact Statements (USDI Bureau of Land Management 1990a, 1990b). These RMPs guide the management of *Pediocactus sileri* habitat at a programmatic level, and incorporated and formalized the management direction for *P. sileri* from the 1987 HMP. The HMP, as an implementation plan, identified specific project actions. Both the Arizona Strip District and the Dixie Resource Area RMPs designate Areas of Critical Environmental Concern (ACECs), which have management prescriptions designed for conservation of *P. sileri* and other resource values. Additional resource management decisions made in the RMPs include establishing OHV management areas, setting livestock management goals, and providing guidelines for locatable and other mineral materials management. The specific management direction given by the RMPs and its effect on *P. sileri* are discussed below where appropriate.

Summary of Comments and Recommendations

In the March 10, 1993, proposed rule (58 FR 13244) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. Appropriate state and Federal agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in The Daily Spectrum, St. George, Utah, on March 23, 1993, which invited general public comment.

A total of seven comments were received. Five commenters supported the reclassification, one commenter opposed the reclassification and recommended retaining endangered status, and one respondent did not express a position. Issues raised by commenters are discussed below.

Issue 1: One commenter expressed concern that the total number of *Pediocactus sileri* populations remains very small despite the BLM survey work, which successfully located more plants.

Response: While only three high density populations are known, the BLM surveys have demonstrated a more complete geographic representation of the species across its limited range than was known at the time of the original listing. The three populations are extensive and the surveys noted additional areas with low density populations.

Issue 2: Three commenters recognized that various threats to the species remain.

Response: This situation is acknowledged by the Service and is reflected, in part, in the reclassification rather than delisting of the species. However, the increased protection offered some populations through the designation of ACECs and other land management prescriptions (see the "Background" section and Factor A in the "Summary of Factors Affecting the Species" section) and the documentation of higher numbers of plants has diminished the relative severity of these threats.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Pediocactus sileri* should be reclassified from endangered to threatened status. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be listed or reclassified as endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Pediocactus sileri* (Engelm. ex Coult.) L. Benson (Siler pincushion cactus) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The habitat of *Pediocactus sileri* occurs in the Arizona Strip, a remote and essentially uninhabited area in extreme northern Arizona. Commercial uses of *P. sileri* habitat include recreation, livestock grazing, and mining. Habitat loss and degradation due to road building, housing and commercial development, off-highway traffic, and other sources is likely to increase as human populations increase in the nearby towns of St. George and Kanab, Utah, and Fredonia, Arizona.

Off-highway traffic is adversely affecting *Pediocactus sileri* and its habitat at a few localities, including Atkin Well, the Warner Ridge/Fort Pierce area near St. George, Utah, and the area near Fredonia, Arizona, and Kanab, Utah. The convenient location of the latter two areas, the gently rolling hills, and sparse vegetation make these localities attractive sites for OHV users. Observations and data from monitoring plots indicate that few *P. sileri* deaths were directly caused by OHVs, but that the OHV traffic is fairly frequent. Gierisch (1980) found that 8 out of 1,153 cacti were killed by OHV activity on Warner Ridge. In 1985, 1 plant was killed and 6 plants were run over by OHVs out of 7,000 plants counted (USDI Bureau of Land Management 1985). Although Gierisch (1989) found no *P. sileri* mortality due to OHVs in plots on Warner Ridge, he observed 5–10 injured or destroyed plants outside the plots. He also noted that 33 of 60 plots contained single tracks of OHVs, and 5 of the 60 plots contained OHV trails that had been used repeatedly. A site near Kanab/Fredonia is heavily impacted by OHVs and other recreational uses, but no data are available on their direct or indirect effects on the cactus.

The BLM Arizona Strip District RMP and Final Environmental Impact Statement (USDI Bureau of Land Management 1990a) and Dixie Resource Area RMP and Final Environmental Impact Statement (USDI Bureau of Land Management 1990b) contain OHV designations for the District and Resource Area. Off-road traffic is permitted to varying levels throughout the range of *Pediocactus sileri*. The Warner Ridge area is closed to OHV traffic. This area, which also contains another endangered plant, is not fenced to exclude OHVs, but signs have been placed every 0.4 kilometer (0.25 mile). Nearby, in the Fort Pierce area, where a dense population of *P. sileri* occurs, the BLM permits OHV traffic on designated roads and trails. On 320 ha (800 ac) east of Kanab and Fredonia, in a dense population of *P. sileri*, OHV traffic is unrestricted. The Rhino Rally, an OHV event, takes place within the central habitat of *P. sileri*, in an area designated as an "OHV event area" in the Arizona Strip District RMP. The BLM limits the Rhino Rally to 300 entrants and restricts the event primarily to roads and washes.

Livestock grazing occurs throughout the habitat of *Pediocactus sileri*. The Service presumes that the BLM has not changed term permits, stocking rates, or grazing systems since the species was listed, because no formal or informal section 7 consultations regarding existing range management or a change in management have occurred. In addition, livestock waters have not been moved away from dense *P. sileri* populations. The Service cannot assess the effects of livestock on *P. sileri* on the Kaibab-Paiute Indian Reservation due to a lack of information.

Because forage is very sparse on soils preferred by *Pediocactus sileri*, there is little grazing if the areas are relatively distant from water sources. In these areas, little trampling occurs and *P. sileri* plants can be found in open, unprotected microsites (Gierisch and Anderson 1980). Gierisch (1989) stated that no *P. sileri* plants were destroyed due to livestock trampling on Warner Ridge. In earlier studies, he found 6 plants out of 1,153 were killed by livestock (Gierisch 1980). Gierisch (1989) found livestock tracks in 90 percent of the plots on Warner Ridge, indicating that cattle do travel through the area.

Hughes (1991) also found that livestock rarely trampled mature plants in monitoring plots. He speculated (pers. comm. 1992) that mature cacti are large enough that cattle walk around them rather than step on them. However, seedlings and juvenile plants may be too small to be seen and avoided.

At watering areas where livestock concentrate, damage or destruction of *Pediocactus sileri* is "undoubtedly severe" (Gierisch and Anderson 1980). At Atkin Well, where livestock are severely affecting the habitat, *P. sileri* plants grow in the shrub understory or along drainage slopes, areas protected from the trampling of cattle moving to and from this water source (Gierisch and Anderson 1980). Atkin Well and Lytle Spring populations showed a size class distribution with a small number of short cacti and a large number of tall cacti. These populations were judged to be of "special concern" (USDI Bureau of Land Management 1985).

Erosion has been identified as a source of mortality for *Pediocactus sileri* (Gierisch 1981, Hughes 1991). Because the substrate is erodible, a low rate of mortality due to erosion is expected and probably natural. However, OHV traffic, roads, overgrazed habitat, or areas of livestock concentration may lead to increased erosion, resulting in increased cactus mortality rates and loss of habitat.

In 1989, the Arizona Department of Agriculture, U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS), and local ranchers proposed a large-scale (approximately 325 square kilometer, or 125 square mile) application of general pesticides to control a grasshopper infestation. Although the BLM disapproved the project, the Service anticipates that rangeland pesticide applications will be proposed in the future.

Through funding from APHIS, the U.S. Department of Agriculture Bee Biology Lab in Logan, Utah, has conducted research to understand the potential effects of rangeland pesticides on endangered and threatened plants. This research has improved our understanding of the pollination and reproductive ecology of *Pediocactus sileri*. Tepedino (1990) reported that the species is pollinated by small native bees; two of the bees are undescribed and one is very rare.

Mineral exploration and development and oil and gas leasing may contribute to the loss and degradation of *Pediocactus sileri* habitat. Currently, these adverse effects appear to be occurring at a slow rate and affecting small amounts of habitat or numbers of plants. One Mineral Feasibility Report (Swapp 1985) addressed the threat of uranium mining within high density *P. sileri* habitat and concluded that uranium exploration or mining was extremely unlikely there. Another Mineral Feasibility Report (Cormier 1985) for the Warner Ridge area did not specifically address uranium mining feasibility. However, in a survey of 246 Mining Plans of Operation (MPO) for uranium mining filed between 1980 and 1985, the BLM found that 165 occurred outside potential habitat of *P. sileri* (USDI Bureau of Land Management 1985). Of the remaining 81 MPOs occurring within potential habitat, 51 were surveyed and did not contain *P. sileri*. The remaining 30 sites within potential habitat were surveyed and found to contain *P. sileri*; projects were modified to avoid directly affecting the plants. An average of 2 ha (5 ac) were disturbed at each of the 30 sites within potential habitat. Activity has taken place within low density *P. sileri* habitat, except for one core drilling in high density habitat. Wenrich and Sutphin (1988) identified low density *P. sileri* habitat as having potential for economically important uranium deposits.

Gypsum mining or exploration is unlikely to occur in the Warner Ridge or the Lost Spring Mountain habitats of *Pediocactus sileri* (Cormier 1985, Swapp 1985). The BLM believes mining gypsum is economically feasible if the gypsum (calcium sulfate) content exceeds 90 percent (Cormier 1985, Swapp 1985). The gypsum content of the Shnabkaib and Middle Red Members of the Moenkopi Formation has been estimated at 3–5 percent (Swapp 1985) or up to 25 percent (Stewart et al. 1972). Both estimates are well below the level needed to sustain an economically viable operation.

Mineral exploration and development is permitted to occur within the five ACECs designated to provide special management prescriptions for *Pediocactus sileri* (USDI Bureau of Land Management 1990a, 1990b). If mineral exploration and development is proposed within ACECs, the BLM requires a plan of operation and special mitigation. These requirements do not necessarily apply outside of ACECs. Therefore, not all habitat or populations are covered by this protection.

Oil and gas exploration or drilling is another potential threat to *Pediocactus sileri*, although the current threat is minor. Essentially all areas within the Moenkopi Formation are under oil and gas leases (USDI Bureau of Land Management 1985). As recently as 1990 the BLM offered at least one tract containing *P. sileri* for a competitive oil and gas lease sale (BLM Minerals staff, Arizona Strip District, St. George, Utah, pers. comm. 1990). However, there are no producing oil wells nor any history of wells in the Arizona Strip District or southwestern Utah (USDI Bureau of Land Management 1985).

In summary, current mining and mineral exploration and oil and gas leases pose a minor threat to *Pediocactus sileri*. The probability of gypsum mining and active oil and gas pumping appears small. Uranium exploration is occurring and has already impacted some habitat. Although the current economic situation seems to have slowed uranium exploration, the future is uncertain.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Despite the legal protection offered by the Act and the Arizona Native Plant Law (Arizona Revised Statutes Chapter 7, Title 3, Article 1), *Pediocactus sileri* is collected by cactus enthusiasts for commercial purposes and private interest. Steve Brack (Mesa Gardens, Belen, New Mexico, pers. comm. 1992) is familiar with the worldwide cactus trade; he believes that cultivated and wild-collected plants of this species are rare in the cactus trade because it has a reputation for being hard to grow. He estimates that 99 percent of transplanted plants will die

within 2 years. Seeds germinate readily, but due to a narrow tolerance for soil type and environmental conditions, the plants will mature only with skillful cultivation. Grafting, a technique commonly used to commercially propagate the endangered *Pediocactus bradyi*, is not commonly used with *P. sileri* because the latter species is too large and slow growing.

Brack (pers. comm. 1992) noted that *Pediocactus sileri* seeds are readily available in the commercial trade; he assumed the seeds are taken from wild populations. He estimated that a collector could take 5,000 seeds from a dense population in one afternoon. The Service does not have the information needed to assess the degree to which seed collecting is affecting populations.

Although serious hobbyists and professional collectors apparently avoid taking living plants from the wild, other collectors, such as the occasional tourist, resident, or unscrupulous seller, could adversely affect populations. The effects of this activity are very difficult to quantify, but are considered minor at this time.

C. Disease or predation. Various botanists have noted mortality of *Pediocactus sileri* due to disease, insects, and rodents. Within study plots, Gierisch (1989) noted that 28–32 percent of all stems were dead; he believed the mortality was due to disease and predation. Hughes (1991) reported that the most common cause of *P. sileri* mortality was herbivory. Rodents and rabbits apparently find the plants palatable, particularly during years of below-average rainfall when other food and water sources are scarce. Small mammals may attack from the top or from underground and consume the whole plant (Gierisch 1981).

In at least one case, data indicate that *Pediocactus sileri* mortality from small mammal populations may be affected by management practices. Plants inside a fenced area excluding cattle were more likely to die from small mammal herbivory than plants outside the exclosure (Hughes 1991). Hughes (pers. comm. 1988) speculated that small mammals preferred the habitat inside the exclosure because it had greater plant cover and food.

Brack (1983) noted heavy insect damage to a *Pediocactus sileri* population. Insects had eaten the cortical tissues and roots of about 80 percent of the plants. He believed the damaged plants would die.

Although insects, disease, and small mammal herbivory may appear to be natural causes of mortality, we do not know if the current rates of disease or predation are at natural levels or are imbalanced for some reason. Analysis of data from long-term monitoring should indicate whether recruitment rates in populations with disease or predation are sufficient to maintain viable populations.

D. The inadequacy of existing regulatory mechanisms. Pediocactus sileri is currently protected by the Act and is contained in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (16 U.S.C. 1538(c)). It is also protected from commercial use by the Arizona Native Plant Law (A.R.S. §§ 3–901 *et seq.*). The reclassification to threatened status will not alter most protections afforded this species under these regulatory mechanisms. Existing regulatory mechanisms determined necessary to protect this species and its habitat will remain in effect.

The Endangered Species Act amendments of 1988 provided several new protections for endangered plants that have not been extended through regulation to threatened plants. The 1988 amendments added additional provisions to section 9(a)(2)(B) of the Act to make it a violation to maliciously damage or destroy any endangered plant in any area under Federal jurisdiction, or to remove, cut, dig up, or damage or destroy any endangered plant on any non-Federal area in knowing violation of any law or regulation of any state or in the course of any violation of a state criminal trespass law. Upon reclassification to threatened status, it will still be a violation of the Act to remove and reduce to possession *Pediocactus sileri* from areas under Federal jurisdiction (50 CFR 17.71(a)). This prohibition should adequately protect *P. sileri* because no instances of malicious damage or destruction (i.e., vandalism) to *P. sileri* have been reported and few *P. sileri* plants are known from non-Federal lands.

Seeds from endangered plants are subject to the trade prohibitions of section 9(a)(2) of the Act. However, seeds from cultivated specimens of threatened plants are exempt from these trade prohibitions provided that a statement of "cultivated origin" appears on their containers (50 CFR 17.71(a)). This should have little effect on trade in *Pediocactus sileri* seeds. Because the plant is difficult to grow in cultivation, few seeds of cultivated origin are available for sale. The sale of wild-collected seeds will continue to be prohibited.

E. Other natural or manmade factors affecting its continued existence. The long-term viability of populations of this species is still uncertain. Since 1985, the BLM Arizona Strip District has been collecting demographic data in four dense population areas across the range of this species. A population viability analysis could probably indicate whether the dense population areas are reproducing sufficiently to maintain population size.

The Service has carefully assessed the best scientific and commercial information available regarding past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to reclassify *Pediocactus sileri* from endangered to threatened status. New information gathered by the BLM as well as recovery efforts for the species have changed our understanding of the range, abundance, and magnitude and relative importance of threats to *P. sileri*. Although the species is more abundant than originally believed in 1979, only three large populations are known. We do not know whether the species is able to maintain stable populations given current habitat conditions, but the BLM is accumulating data that will assist in that determination. The remaining manageable threats to the species include livestock grazing and associated developments, OHV traffic, pesticide applications, and minerals exploration. With more plants known to exist, we now believe the magnitude of threats to be less important than when the species was listed.

Critical habitat for *Pediocactus sileri* was not designated in 1979 when the species was listed because the Service believed the action was not prudent. The Service continues to believe designating critical habitat is not prudent. As discussed under Factor B in the "Summary of Factors Affecting the Species," *P. sileri* is subject to taking, an activity difficult to prevent and only regulated by the Act with respect to threatened plants in cases of removal and reduction to possession of such plants from lands under Federal jurisdiction. These provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make *P. sileri* more vulnerable and increase enforcement problems. Therefore, it remains not prudent to determine critical habitat for *P. sileri*.

Effects of Rule

This rule changes the status of *Pediocactus sileri* from endangered to threatened. *Pediocactus sileri* is no longer considered to be in imminent danger of extinction throughout a significant portion of its range. Reclassification has little effect on regulations regarding protection and recovery of the species. Protection of

threatened species under section 7 of the Act is essentially the same as for endangered species. Protection for threatened species under section 9 of the Act is much the same as for endangered species except for those items discussed under Factor D in the "Summary of Factors Affecting the Species" section of this rule. Recovery provisions are the same for threatened species as for endangered species.

This action is not an irreversible commitment on the part of the Service and reclassifying *Pediocactus sileri* to endangered would be possible should changes in management, habitat, or other factors occur that alter the species' present likelihood of survival and recovery.

National Environmental Policy Act

The Service has determined that Environmental Assessments and Enivronmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Authors

The primary authors of this rule are Bruce Palmer and Sue Rutman (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by revising the entry for *Pediocactus sileri*, under the family Cactaceae, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* *	*	*	*	*	*	*
Cactaceae—Cactus family:						
* *	*	*	*	*	*	*
Pediocactus sileri (= *Echinocactus s., Utahia s.*).	Siler pincushion cactus.	U.S.A. (AZ, UT) ..	T	64,524	NA	NA
* *	*	*	*	*	*	*

Dated: November 22, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–31426 Filed 12–23–93; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Relict Darter and Bluemask (=Jewel) Darter

AGENCY: Fish and Wildlife Service, Interior

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the relict darter (*Etheostoma chienense*) and bluemask (=jewel) darter (*Etheostoma* (*Doration*) sp.) under the Endangered Species Act of 1973, as amended (Act). The relict darter, which is endemic to the Bayou du Chien drainage in western Kentucky,

has been collected from only five sites within this drainage and is known to spawn in only one Bayou du Chien tributary. The relict darter has been and continues to be impacted by water quality and habitat deterioration resulting from stream channelization, siltation contributed by poor land use practices, and water pollutants. The bluemask darter is believed to be endemic to the Caney Fork River system (above Great Falls), Cumberland River basin, in central Tennessee. Based on historic records, the species was known from five rivers in the Caney Fork River system. The bluemask darter is now known from four stream reaches. Its distribution has been reduced by such factors as impoundments, water withdrawal, and the general deterioration of water quality resulting from siltation and pollutants contributed by coal mining, gravel mining, poor land use practices, and waste discharges; these factors continue to impact the species and its habitat.

EFFECTIVE DATE: January 26, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address (704/665–1195 Ext. 228).

SUPPLEMENTARY INFORMATION:

Background

Relict Darter

The relict darter is endemic to the Bayou du Chien watershed in extreme western Kentucky. This darter, which is one of 10 recognized species in the *Etheostoma squamiceps* complex of the subgenus *Catonotus*, was described by Page et al. (1992). It is a small (2½-inch) fish. Females and nonbreeding males have light tan colored backs and sides, with brown mottling and six to eight dark brown saddles. They have white unmarked undersides. Breeding males have gray to dark brown sides and backs and light tan undersides.

Warren and Burr (1991) reviewed all known recent and historical literature regarding the relict darter and surveyed known collection sites and potential habitat within the Bayou du Chien watershed. They reviewed fish collection records from adjacent watersheds and also surveyed these areas for the relict darter. They speculated that the fish was once more widespread in the Bayou du Chien system. However, based on historic and current records, they reported that the fish has only been documented from nine sites in Graves and Hickman Counties, Kentucky; only one spawning site is known.

The relict darter's distribution has apparently been reduced by such factors as channelization and the general deterioration of water and habitat quality resulting from siltation and pollutants contributed by poor land use practices and by waste discharges. These factors continue to impact the species and its habitat. Because the species presently inhabits only limited areas and is known to spawn in only one small tributary, it is very vulnerable to extirpation from toxic chemical spills. Additionally, because of its small population size, the species' long-term genetic viability is questionable.

On October 29, 1991, the Service notified by mail (22 letters) potentially affected Federal and State agencies, local governments within the species' present range, and interested individuals that a status review of the relict darter was being conducted. Three comments were received as a result of this notification. The Tennessee Valley Authority and the Kentucky State Nature Preserves Commission supported the species' potential Federal protection and the Kentucky Department of Fish and Wildlife Resources provided information on fish collections in the watershed. No objections to the potential listing of the relict darter were received.

The relict darter does not appear as a candidate in the Service's notice of review for animal candidates that was published in the **Federal Register** on November 21, 1991 (56 FR 58804). However, based on status information gathered in 1991, this species was approved as a category 1 candidate by the Service's Director on April 29, 1992. A category 1 species is a species for which the Service has sufficient information to propose for protection under the Act.

Bluemask Darter

The bluemask darter (*Etheostoma* (*Doration*) sp.), which is closely related to *E. stigmaeum*, is being described as a full species by Steven Layman (University of Alabama, personal communication, 1992). The bluemask darter is a small (1 3/4-inch) fish. Breeding males are nearly covered by a bright blue color. Females and nonbreeding males are not as brightly colored. They have six dark saddlelike markings across the back and seven to eight lateral blotches. This species inhabits areas with slow to moderate current over sand and fine gravel. This habitat type is very limited in some of the inhabited streams.

The bluemask darter is endemic to the Caney Fork River system (above Great Falls), Cumberland River basin, in central Tennessee. Based on current and historic records reviewed by Layman (1991), the species has been collected from five rivers in the Caney Fork River system—Upper Caney Fork River, Collins River, Rocky River, Calfkiller River, and Cane Creek in Grundy, Warren, Van Buren, and White Counties.

A 1991 fish survey (Layman 1991) of the Caney Fork River system above and below Great Falls revealed that the species is now restricted to isolated populations in reaches of four rivers in the Caney Fork River system—Cane Creek, Van Buren County; Collins River, Warren and Grundy Counties; Rocky River, Van Buren County; and Upper Caney Fork River, White County.

The bluemask darter has been impacted by such factors as impoundments, water withdrawals, and the general deterioration of water and substrate quality resulting from siltation and pollutants contributed by coal mining, gravel mining, poor land use practices, water withdrawal, and waste discharges; these factors continue to impact the species and its habitat.

In the Service's notice of review for candidate animals, published in the **Federal Register** of November 21, 1991 (56 FR 58804), the bluemask (=jewel) darter was identified as a category 2 candidate, i.e., a species that is being considered for possible addition to the Federal List of Endangered and Threatened Wildlife, but for which there is insufficient data to make a final decision on the need for listing. Based on the subsequent acquisition of additional status information, the Service's Director approved this species for elevation to category 1 in April 1992.

On February 28, 1992, the Service notified by mail (40 letters) potentially affected Federal and State agencies and local governments and interested individuals within the species' present range that a status review of the bluemask darter was being conducted. Three agencies responded. The Tennessee Wildlife Resources Agency said it would help protect the darter during the status review period and would continue this protection if it were listed. The U.S. Soil Conservation Service and the Department of the Air Force responded to the bluemask darter notification letter but did not take a position on the potential listing. No objections to the potential listing of the bluemask darter were received.

Summary of Comments and Recommendations

In the December 11, 1992, proposed rule (57 FR 58774), and through associated notifications, all interested parties were requested to submit factual reports and information that might contribute to the development of a final rule to list the relict darter and bluemask darter as endangered species. Appropriate Federal and State agencies, county governments, scientific organizations, and interested parties were contacted by letter dated December 17, 1992, and were requested to comment. Legal notices were published in the Southern Standard, McMinnville, Tennessee, on December 27, 1992, and the Paducah Sun, Paducah, Kentucky, December 31, 1992.

Relict Darter

In response to four formal requests, a public hearing on the Service's proposal to list the relict darter as an endangered species was held on April 6, 1993, at Purchase Area Development District, 1002 Medical Drive, Mayfield, Kentucky. The comment period was reopened from March 22, 1993, through April 20, 1993. A notice of the hearing and reopening of the comment period was published in the **Federal Register** on March 4, 1993 (58 FR 12353) and in the Mayfield Messenger, Mayfield, Kentucky, on March 29, 1993.

The Service received 29 written comments and 7 oral comments (at the public hearing) regarding the proposed listing. Six commenters (The Tennessee Valley Authority, Kentucky Department of Fish and Wildlife Resources, Kentucky State Nature Preserves Commission, Association of Concerned Environmentalists, and two individuals) supported the listing, most of the others did not. Following is a summary of the comments, concerns, and questions (referred to as "Issues" for the purpose of this summary) expressed in writing and orally at the public hearing. Issues of similar content have been grouped together. These issues and the Service's response to each are presented below.

Issue 1: Numerous commenters opposed the listing primarily because of perceived impacts to farm-related activities.

Response: The Service can understand the fears of local farmers regarding the potential impact to them resulting from listing the relict darter. However, based on the results of listing other aquatic species in Kentucky, the Service does not believe there will be any major impact to local farming activities as a result of listing the relict darter. (See response to Issues 2 and 5 below.)

Issue 2: If the relict darter is federally listed, landowners along the Bayou du Chien may not be allowed to keep the creek clear of blockages or maintain field drainage ditches, tile drains, and grass waterways.

Response: Landowners will be required to apply for the same Corps of Engineers (Corps) permits that are currently required. If the permit request were to involve a project that may affect the relict darter, the Corps would be required, under section 7 of the Act, to consult with the Service to ensure that the project is not likely to jeopardize the relict darter's continued existence. The Service has consulted with the Corps and other Federal agencies on many projects in areas inhabited by federally listed species. It has been the Service's experience that in nearly all cases the project objectives can be met and the species can be protected.

The Service does not see the need to consult with the Corps, under section 7 of the Act, for the periodic removal of downed trees for normal creek-flow maintenance and flood prevention. However, the Service would encourage that (1) the trees be removed with a minimum of stream-bank and streambed disturbance and that, where possible, any portion of the tree that is embedded in the streambed remain in place and (2) the removal work be done in the summer, fall, or early winter to lessen the impact on relict darter spawning. The relict darter uses the undersides of tree trunks and branches and other stable substrate for spawning and cover. Also, tree trunks and large branches on the stream bottom help to stabilize the streambed.

Issue 3: Several commenters suggested that the Service move the relict darter to other streams controlled by the Service.

Response: One of the primary purposes of the Act (section 2(b) is "* * * to provide a means whereby the ecosystem upon which endangered and threatened species depend may be conserved." Propagation and stocking of a species can be positive conservation tools, and are often used to help recover a species when unoccupied historic habitat is present. However, introduction of the relict darter outside its native range would not meet the Act's objective of preserving both the species and its habitat.

Issue 4: One commenter wanted to know the Service's position on the designation of critical habitat for the relict darter.

Response: The Service does not intend to designate critical habitat for the relict darter (see the "Critical Habitat" section of this rule). This species exists in a very short reach of Bayou du Chien and is known to spawn in only one tributary. The Service believes that the identification of species-specific habitat as part of the critical habitat designation process could expose the species to an increased threat of vandalism, and it would not otherwise be beneficial to the species.

Issue 5: Numerous commenters were concerned about new restrictions that would be placed on farming activities and projects in the Bayou du Chien watershed, how they would be affected if the relict darter were federally listed, and the extent of unforeseen future impacts.

Response: New restrictions would primarily involve a requirement that Federal agencies review their actions and determine if their actions would adversely affect the relict darter. (See the "Available Conservation Measures" section of this rule.)

The Service recognizes that some landowners may consider the listing of the relict darter to be a threat to their livelihood. However, many Kentucky landowners have been dealing with federally listed aquatic species for a number of years, and the lack of reports of landowner conflicts indicates that the Federal protection of species has had minimal impacts on private landowners. The blackside dace, which was placed on the Federal list in 1987, occurs in about 30 streams in the upper Cumberland River basin in eastern Kentucky. Some mussels of the Green and Barrens Rivers in central Kentucky have been federally listed as endangered since the late 1970s. The fanshell mussel, which also exists in the Green and Barrens Rivers, as well as the Licking River in northeastern Kentucky, was listed in 1990. The Service is not aware of any cases where these species have caused significant conflicts with private landowners.

This does not mean that there will never be a conflict between the Service and landowners if the relict darter is federally listed. However, these examples indicate that, based on a historical perspective, the level of conflict involving federally listed aquatic species and private landowners has been minimal in Kentucky.

Issue 6: A number of commenters objected to the fact that the Service does not evaluate economic or other impacts when a species is listed, and also to the fact that landowners are not compensated if listing a species affects the use of their land.

Response: The Act requires the Service to list species based on the best

biological information available. The Act allows the Service to consider only the species' status when determining if a species should be protected under the Act. However, once a species is listed and the Service consults with Federal agencies on projects that are likely to adversely affect the species, the Service is required to work with Federal agencies and landowners to try and develop alternatives that will allow project objectives to be met and at the same time protect the species from extinction. In the rare case where no reasonable and prudent alternative can be identified, the affected individual may apply to the Secretary of the Interior for an exemption under provisions of section 7(g) of the Act.

As stated in the response to Issue 1, the Service does not expect any major impact to local landowners to arise from the relict darter listing. In the highly unlikely event of a bona fide taking of private property, as established by Fifth Amendment case law, such a loss would be reimbursable through the Federal court system.

Issue 7: Several commenters questioned the extent of the relict darter survey, the possibility that the relict darter might exist in other streams, and whether the Service would consider conducting additional surveys before listing the species.

Response: During 1991, recent and historical fish collection records from Bayou du Chien and adjacent watersheds (Mayfield Creek, Obion Creek, Clarks River, and Obion River) were reviewed, and 41 visits were made to sites in the Obion Creek and Bayou du Chien watershed. (See the "Background" section of this rule for a more detailed description of the survey.) Based on fish collections in the Bayou du Chien and historic and recent collection records from adjacent watersheds, the Service concludes that it is not likely that additional relict darter populations will be discovered outside the Bayou du Chien watershed. There is always a possibility that this fish does exist elsewhere. However, based on the extensive surveys described above, the Service is satisfied that no additional surveys are needed.

Issue 8: Several landowners wanted to know if government employees or Service contractors had the right to trespass on private property to study the relict darter.

Response: Neither government biologists nor Service contractors have the right to violate trespass laws to study the relict darter.

Issue 9: Several commenters questioned whether safeguards were in place to ensure that the designation of the relict darter as a distinct species is based on sound scientific principles.

Response: Publication of a species description in scientific journals and a review of the description by the Service and other scientists is the primary safeguard to ensure that species descriptions are based on scientific data. The relict darter was described as a distinct species by Dr. Lawrence Page, Illinois Natural History Survey, Champaign, Illinois. Dr. Page is a noted authority on North America's freshwater fish. In preparing his description of the relict darter, Dr. Page examined the morphological and genetic characteristics of 17 species in the darter subgenus *Catonotus*. His description of the relict darter appeared in a major scientific journal (*Copeia*) and was subject to review by other scientists familiar with this species group and the taxonomy of fishes. The Service is satisfied, based on the present understanding of the relationships among the darters within this group, that the relict darter is a distinct species.

Issue 10: Several commenters wanted to know if farmers along the Bayou du Chien would be able to continue to use agricultural chemicals according to the label.

Response: The Service consults with the Environmental Protection Agency to determine if pesticides they register are likely to jeopardize the continued existence of listed species. When the use of a chemical is likely to jeopardize a listed species, the use of that chemical is restricted. Thus, it is possible that the use of a pesticide could be restricted to avoid jeopardizing the relict darter.

Issue 11: A number of commenters were concerned that the listing would affect current farming methods in the watershed.

Response: The Service has no authority under the Act to require changes in farming practices. However, the Service would encourage the use of buffer strips along water courses, reductions of pesticide and herbicide applications, and soil conservation practices that help control soil loss and siltation.

Issue 12: Several commenters wanted to know what involvement they would have in recovery planning, what actions would be required of local landowners in the recovery process, and how long recovery would take.

Response: The Service is required by the Act to provide an opportunity for public review and input into recovery plans. The Service, through provisions of the Act, can identify species and ecosystems that need special attention. However, without local support, the species and its habitat may be lost. Recovery, to be successful, must be a cooperative venture among willing participants. The Service cannot force landowners to participate in recovery. However, the Service would seek willing landowners to participate in habitat restoration for the relict darter.

Recovery is a long and complex process, and it is difficult to estimate when recovery will be reached. It has taken many years to adversely impact the relict darter and its habitat, and it will take many years to recover it.

Issue 13: Several individuals felt there might be a connection between the listing of the relict darter and a Service plan to create a refuge in western Kentucky.

Response: The Service is in the very early stages of considering a possible refuge in the Clarks River watershed near Benton, Kentucky. The relict darter is not known from this basin. There is no connection between this listing and planning for the refuge.

Issue 14: Several agencies, organizations, and individuals provided information regarding the efforts by local farmers to conserve the quality of the Bayou du Chien watershed, and one individual suggested that a cooperative effort among farmers and government agencies might be used to protect the fish without listing it.

Response: The Service recognizes and applauds the conservation efforts of many farmers in the Bayou du Chien watershed and emphasizes that it will take a coordinated effort to recover the relict darter. However, the Service believes the relict darter is in serious danger of extinction and that it was the intent of Congress to federally protect such species. Since the species meets the definition of endangered, it must be listed under the Act.

Issue 15: One individual suggested that the Service consider listing the relict darter as a threatened species.

Response: The Service has evaluated the status of the relict darter in making a determination as to whether to list the species as endangered or threatened. Based on the species' limited range, significant threats to its continued existence, and the fact that a single toxic spill could cause extinction, the Service believes that endangered status is appropriate.

Bluemask Darter

Six written comments were received on the proposal to list the bluemask darter as an endangered species. The Tennessee Valley Authority, Tennessee Wildlife Resources Agency, Tennessee Department of Environment and Conservation, and a private individual supported listing the bluemask darter.

On January 20, 1993, the Collins River Preservation Association (CRPA) requested a public hearing on the bluemask darter proposal. A biologist with the Service's Asheville Field Office met with members of the CRPA to discuss the proposed rule and explain the potential implications of listing the bluemask darter to local residents. As a result of this meeting, the CRPA withdrew its request for a public hearing (letter dated February 5, 1993) and provided clarification regarding threats to the species. That information is included in this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the relict darter and bluemask darter should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the relict darter (*Etheostoma chienense*) and the bluemask darter (*Etheostoma* (*Doration*) sp.) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The relict darter is endemic to the Bayou du Chien system in extreme western Kentucky (Warren and Burr 1991). Webb and Sisk (1975) indicated that this darter was "fairly common" in the high gradient reaches of the Bayou du Chien in the early 1970s. Warren and Burr (1991) speculated that in presettlement times the species was likely more widespread within the Bayou du Chien watershed in areas upstream of the Mississippi floodplain (upstream of Moscow, Kentucky).

Warren and Burr (1991) surveyed the system in 1991 and collected the species at five sites but found it abundant at only two sites (18 were collected at one site and 46 at another). The other three sites yielded a total of only eight relict darters. They and other researchers have been able to locate only one spawning area in a small tributary stream located in Graves County.

Adult relict darters are concentrated in the headwater areas in slow-flowing pools, usually associated with gravel, sand, and leaf litter substrates near fallen tree branches, undercut banks, or overhanging stream-bank vegetation (Warren and Burr 1991). Warren and Burr (1991) noted that the Bayou du Chien system has been extensively channelized. Much of the streams' sinuosity was eliminated, undercut banks were lost, stream-bank vegetation and instream cover were removed, and some smaller streams now flow only intermittently. This massive alteration of the relict darter's habitat reduced both relict darter numbers and the amount of suitable habitat. Aside from past channelization impacts, the area is extensively farmed, and much of the watershed has been deforested. These alterations result in a fairly high silt load within the Bayou du Chien system that continues to degrade the habitat and further impact the species.

The bluemask darter has only been collected from the Caney Fork River system (above Great Falls), Cumberland River basin, in central Tennessee. Layman (1991) reviewed historic collection records and reported that the species has been collected from five rivers in the Caney Fork River system—Upper Caney Fork River, Collins River, Rocky River, Calfkiller River, and Cane Creek in Grundy, Warren, Van Buren, and White Counties. Historic fish collection records are sparse for this area. However, considering the extent of the fish's preferred habitat (slow to moderate current, with sand and fine gravel substrates (Layman 1991)), which was inundated by Great Falls Reservoir in the 1910s, the species was once likely more widely distributed within this portion of the Caney Fork system than available records indicate. The belief that the species has undergone a range reduction is also supported by Starnes and Etnier (1980).

In 1991, Layman (1991) surveyed the Caney Fork River system above and below Great Falls. He found the fish restricted to isolated populations in short reaches of four rivers in the Caney Fork River system—Cane Creek, Van Buren County; Collins River, Warren and Grundy Counties; Rocky River, Van Buren County; and upper Caney Fork River, White County. Layman (1991) estimated that the bluemask darter currently inhabits about 500 feet of Cane Creek, 25 miles of the Collins River, 2 miles of the Rocky River, and 2.5 miles of the upper Caney Fork River.

The species was historically taken from two sites in the Calfkiller River, White County. However, Layman (1991) made collections at both of these historic sites and four other Calfkiller River sites, but no specimens were taken. It is believed that the species has now been extirpated from this river. Also, the fish was not taken (Layman 1991) in collections made in other Caney Fork tributaries—Barrens Fork River, Falling Water River, Charles Creek, Laurel Creek, Hickory Creek, Town Creek, and Mountain Creek.

The bluemask darter's distribution has been reduced by such factors as impoundments, water withdrawal, and the general deterioration of water quality resulting from siltation and pollutants contributed by coal mining (coal mining-related impacts do not occur in the Collins River); gravel mining; poor land use practices related to agriculture, road construction, etc.; water withdrawal, and waste discharges. These factors continue to impact the species and its habitat.

B. Overutilization for commercial, recreational, scientific, or educational purposes. The specific areas inhabited by both fish are presently not known to the general public. As a result, there has not been a problem with the general public taking these fish. However, both fish exist in very small, restricted areas; and the relict darter is known to spawn in only one short stream reach. If the specific inhabited stream reaches were to become public knowledge through critical habitat designation, it would be extremely easy for vandals to seriously impact the species. Although scientific collecting is not presently identified as a threat, take by private and institutional collectors could pose a threat if specific inhabited locations are revealed. Federal protection, through listing, will help to minimize the negative impact of illegal or inappropriate take.

C. Disease or predation. Although the relict and bluemask darters are undoubtedly consumed by predators, there is no evidence that predation is a threat to the species. Disease in not known to be a problem for either species.

D. The inadequacy of existing regulatory mechanisms. The States of Kentucky and Tennessee prohibit taking fish and wildlife for scientific purposes without a State collecting permit. These permits provide some protection for these fish. However, the species are generally not protected from other threats. Federal listing will provide additional protection for the species under the Act by requiring Federal permits to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may adversely affect them.

E. Other natural or manmade factors affecting its continued existence. Because the existing relict and bluemask darter populations inhabit only short stream reaches, they are vulnerable to extirpation from accidental toxic

chemical spills. This is especially true of the only known relict darter spawning site. Additionally, because the relict darter population has been drastically reduced in size, the species' long-term genetic viability is questionable.

All bluemask darter populations are now isolated by the Great Falls Reservoir. As the populations in Cane Creek and the Upper Caney Fork are extremely small and the reservoir restricts gene flow among populations, the long-term genetic viability of these populations is questionable.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by both fish in determining to make this rule final. Based on these evaluations, the preferred action is to list the relict darter (*Etheostoma chienense*) and bluemask darter (*Etheostoma* (*Doration*) sp.) as endangered. The relict darter is now known from only five sites in the Bayou du Chien system in western Kentucky. The bluemask darter is currently known from only four streams in the Caney Fork River system in central Tennessee. These fish and their habitat have been and continue to be impacted by habitat destruction and range reduction. Their limited distribution also makes them very vulnerable to toxic chemical spills. Because of their restricted distributions and their vulnerability to extinction, endangered status appears to be the most appropriate classification for these species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for these species. Such a determination would result in no known benefit to the relict and bluemask darters, and designation of critical habitat could further threaten these two species.

Section 7(a)(2) and regulations codified at 50 CFR part 402 require Federal agencies to ensure, in consultation with and with the assistance of the Service, that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat, if designated. (See the "Available Conservation Measures" section for a further discussion of section 7.) As part of the development of this final rule, Federal and State agencies were notified of the fishes' general distribution, and they were requested to provide data on proposed Federal actions that might adversely affect the two species. No specific projects were identified. Should any future projects be proposed in areas inhabited by these fish, the involved Federal agency will already have the general distributional data needed to determine if the species may be impacted by their action, and, if needed, more specific distributional information would be provided.

Critical habitat also would not be beneficial in terms of adding additional protection for the species under section 7 of the Act. Regulations promulgated for the implementation of section 7 provide for both a "jeopardy" standard and a "destruction or adverse modification" of critical habitat standard. Due to the highly precarious status of the bluemask and relict darters, any Federal action likely to adversely affect the species would trigger both standards. Under these conditions, the "destruction or adverse modification" standard adds no additional benefit to protection of the species.

In addition, both fish are very rare, and taking for scientific purposes and private collection could pose a threat if specific site information were released. The publication of critical habitat maps in the **Federal Register** and local newspapers and other publicity accompanying critical habitat designation could increase the collection threat and increase the potential for vandalism during the often controversial critical habitat designation process. The locations of populations of these species have consequently been described only in general terms in this final rule. If needed, any existing precise locality data would be available to appropriate Federal, State, and local governmental agencies from the Service office described in the "**ADDRESSES**" section; the Service's Cookeville Field Office, 446 Neal Street, Cookeville, Tennessee 38501; the Kentucky Department of Fish and Wildlife Resources; Kentucky State Nature Preserves Commission; Tennessee Wildlife Resources Agency; and Tennessee Department of Environment and Conservation.

For the foregoing reasons the Service believes that critical habitat designation is not prudent for these species, and that their protection can be adequately accomplished through the section 7 jeopardy standard and section 9 prohibitions against take.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service notified Federal agencies that may have programs affecting these species. No specific proposed Federal actions were identified that would likely affect the species. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or issuance of permits for reservoir construction, stream alterations, wastewater facility development, pesticide registration, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations can be resolved so that the species is protected and the project objectives are met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to

the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. These species are not in trade, and such permit requests are not expected.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Layman, S. R. 1991. Status survey for the dirty darter (*Etheostoma olivaceum*) and the jewel darter (*Etheostoma* (*Doration*) sp.) in the Caney Fork and Cumberland Rivers, Tennessee. Final report submitted to the U.S. Fish and Wildlife Service, Asheville, NC. 35 pages.

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Author

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List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Fishes, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
* * * * *							
Darter, bluemask(=jewel).	*Etheostoma (Doration)* sp..	U.S.A. (TN)	Entire	E	525	NA.	
* * * * *							
Darter, relict	*Etheostoma chienense.*	U.S.A. (KY)	Entire	E	525	NA.	
* * * * *							

Dated: November 22, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

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federal register

Monday
December 27, 1993

Part IV

Department of Agriculture

Cooperative State Research Service

Rangeland Research Grants Program for Fiscal Year 1994; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Rangeland Research Grants Program for Fiscal Year 1994; Solicitation of Applications

Notice is hereby given that under the authority in section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333), the Cooperative State Research Service (CSRS) of the United States Department of Agriculture (USDA) will award standard grants for basic studies in certain areas of rangeland research. No more than $80,000 will be awarded for the support of any one project, regardless of the amount requested. The total amount of funds available for grants under the Rangeland Research Grants Program (program) during fiscal year 1994 is $453,839.

Under this program, subject to the availability of funds, the Secretary may award grants to land-grant colleges and universities, State agricultural experiment stations, and to colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research, as determined by the Secretary. Except in the case of Federal laboratories, each grant recipient shall match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding. Proposals received from scientists at non-United States organizations or institutions will not be considered for support. In addition, in the case of any equipment or product that may be authorized to be purchased with the funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

Applicable Regulations

This program is subject to the provisions found in 7 CFR part 3401, as amended (58 FR 21852, April 23, 1993), which sets forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, processes regarding the awarding of grants, and regulations relating to the post-award administration of grant projects. Pursuant to section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3319), funds made available under this program to recipients other than Federal laboratories shall not be subject to reduction for indirect costs or for tuition remission costs. Since these costs are not allowable costs for purposes of this program, such costs incurred by a grant recipient may not be used to meet the matching funds requirement. In addition, the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015, as amended; the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR Part 3016, as amended; the regulations governing Governmentwide Debarment and suspension (Nonprocurement) and the Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017, as amended; the New Restrictions on Lobbying, 7 CFR part 3018; the Audits of Institutions of Higher Education and Other Nonprofit Institutions, 7 CFR part 3051; and the CSRS regulations implementing the National Environmental Policy Act of 1969, 7 CFR part 3407, apply to this program.

Specific Areas of Research To Be Supported in Fiscal Year 1994

Standard grants will be awarded to support basic research in certain areas of rangeland research. Proposals will be considered in the following specific areas: (1) Management of rangelands and agricultural land as integrated systems for more efficient utilization of crops and waste products in the production of food and fiber; (2) methods of managing rangeland watersheds to maximize efficient use of water and improve water yield, water quality, and water conservation, to protect against onsite and offsite damage to rangeland resources from floods, erosion, and other detrimental influences, and to remedy unsatisfactory and unstable rangeland conditions; and (3) revegetation and rehabilitation of rangelands including the control of undesirable species of plants.

Program related questions should be directed to Dr. Wayne K. Murphy, CSRS–USDA; telephone (202) 401–4089.

Compliance With the National Environmental Policy Act (NEPA)

As outlined in 7 CFR part 3407 (the CSRS regulations implementing the National Environmental Policy Act of 1969), environmental data for any proposed project is to be provided to CSRS so that CSRS may determine whether any further action is needed. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one of the categories.

(1) Department of Agriculture Categorical Exclusions. (7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSRS Categorical Exclusions. (7 CFR 3407.6)

Based on previous experience, the following categories of CSRS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment;

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSRS to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, a separate statement must be included in

the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the project proposed falls within the categorical exclusions, the specific exclusion must be identified. The information submitted shall be identified in the Table of Contents as "NEPA Considerations" and the narrative statement shall be placed after the coversheet of the proposal.

Even though a project may fall within the categorical exclusions, CSRS may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

How To Obtain Application Materials

Copies of this solicitation, the Application Kit, and the Administrative Provisions for this program (7 CFR part 3401) may be obtained by writing to the address or calling the telephone number which follows: Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Ag Box 2245, Washington, DC 20250–2245, Telephone: (202) 401–5048.

These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number, to psb@csrs.esusda.gov which states that you want a copy of the application materials for the Fiscal Year 1994 Rangeland Research Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

What To Submit

An original and nine copies of each proposal must be submitted. This number of copies is necessary to permit thorough, objective merit evaluation of all proposals received before funding decisions are made.

Every effort should be made to ensure that the proposal contains all pertinent information when submitted. Prior to mailing, compare your proposal with the guidelines contained in the Administrative Provisions which govern the Rangeland Research Grants Program, 7 CFR part 3401. Proposals submitted by organizations other than Federal laboratories shall state that the 50 percent non-Federal funding requirement will be met.

Each copy of each proposal must include a Form CSRS–661, "Application for Funding." Applicants should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSRS–661 and the other required forms and certifications are contained in the Application Kit).

Grant proposals shall be limited to 10 pages (single-spaced and typed on one side of the page only), exclusive of required forms, bibliography and vitae of the principal investigator(s), senior associate(s), and other professional personnel.

All copies of each proposal shall be mailed in one package. Please make sure that each copy of each proposal is stapled securely in the upper left-hand corner. Do Not Bind.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Where and When To Submit Applications for Funding

To be considered for funding during Fiscal Year 1994, proposals must be submitted by February 28, 1994.

Proposals submitted through the regular mail must be postmarked by February 28, 1994, and should be sent to the following address: Proposal Services Branch; Awards Management Division; Cooperative State Research Service; U.S. Department of Agriculture; room 303, Aerospace Center; Ag Box 2245; Washington, DC 20250–2245. The telephone number is: (202) 401–5048.

Hand-delivered proposals must be submitted to an express mail or a courier service, or brought to the following address by February 28, 1994: Proposal Services Branch; Awards Management Division; Cooperative State Research Service; U.S. Department of Agriculture; room 303, Aerospace Center; 901 D Street, SW.; Washington, DC 20024. The telephone number is: (202) 401–5048.

Supplementary Information

The Rangeland Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, this 9th day of December 1993.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 93–31452 Filed 12–23–93; 8:45 am]

BILLING CODE 3410–22–M

federal register

Monday
December 27, 1993

Part V

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice of Approved Tribal-State Compact

DEPARTMENT OF THE INTERIOR

AGENCY: Bureau of Indian Affairs.

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Agreement Between the Northern Cheyenne Tribe and the State of Montana Concerning Class III Gaming, which was executed on September 28, 1993.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 13, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–31454 Filed 12–23–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Monday
December 27, 1993

Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 880
Coal Formation Fire Control; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 880

RIN No. 1029–AB77

Coal Formation Fire Control

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior (DOI) proposes to amend its regulations, 30 CFR, Chapter VII, Subchapter R, to implement a change to the mine fire control activities under the authority of the Act of August 31, 1954, and section 205 of the Appalachian Regional Development Act of 1965. The amendments are due to changes recently enacted as part of the Energy Policy Act of 1992, Public Law 102–486 (Oct. 24, 1992).

DATES: *Written Comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on February 25, 1994.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule in Denver, Colorado on February 18, 1994 and in Pittsburgh, Pennsylvania on February 18, 1994. OSM will accept requests for public hearings until 5 p.m. Eastern time on January 26, 1994. Individuals wishing to attend but not testify at any hearing should contact the person identified under **FOR FURTHER INFORMATION CONTACT** beforehand to verify that the hearing will be held.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol St., NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 10–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.

Public Hearings: If public hearings are scheduled in Denver or Pittsburgh (see **DATES:** *Public Hearings*), such hearings will be held at Brooks Towers, 2nd Floor Conference Room, 1020 15th St., Denver, Colorado and Building 10, Parkway Center, room 201, Pittsburgh, Pennsylvania.

Request for Public Hearings: Submit requests orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Thomas E. Browne, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–208–2661.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments. Comments received after the close of the comment period (see **DATES**) or delivered to an address other than those listed above (see **ADDRESSES**) may not necessarily be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule by request only. The dates and addresses scheduled for the hearings at two locations are specified previously in this notice (see **DATES** and **ADDRESSES**).

Any person interested in participating in one of the proposed hearings should inform Mr. Browne (see **FOR FURTHER INFORMATION CONTACT**) either orally or in writing by 5 p.m. Eastern time January 26, 1994, and should include an indication as to which hearing he or she wishes to attend. If no one has contacted Mr. Browne to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

II. Background

A. Summary of the Act of August 31, 1954

It was recognized by Congress that outcrop and underground fires in coal formations represent a serious wastage of the fuel resources of the nation, and constitute a menace to the health and safety of the public and to surface property. Congress therefore passed the Act of August 31, 1954 (30 U.S.C. 551–558), to provide for the control and extinguishment of outcrop and underground coal fires. The Secretary of the Interior was authorized: (a) To conduct surveys, investigations, and research relating to the causes and extent of outcrop and underground fires in coal formations and the methods for control or extinguishment of such fires; to publish the results of any such surveys, investigations, and research; and to disseminate information concerning such method; and (b) to plan and execute projects for control or extinguishment of fires in coal formations. These projects could be performed on lands owned or controlled by the United States or any of its agencies, with the cooperation of the agency having jurisdiction thereof, and on other lands upon obtaining proper consent or the necessary rights or interests in such lands. Federal funds could not be used to control or extinguish fires in any privately owned operating coal mine.

The United States Bureau of Mines was initially responsible for carrying out the provisions of this law, the only Federal program providing funding for the control of coal fires. With the passage of the Surface Mining Control and Reclamation Act of 1977, Public Law 95–87, 30 U.S.C. 1201 *et seq.* (SMCRA) on August 3, 1977, Federal funds became available through the Abandoned Mine Land (AML) program to extinguish or control coal fires at eligible AML sites. In 1983, the responsibility for implementing the Act of August 31, 1954, was transferred to OSM.

B. Summary of Section 2504 (d), "Coal Formations," of the Energy Policy Act of 1992

The Energy Policy Act of 1992 provided additional authority for States regarding projects for the control of outcrop or underground fires in coal formations under the authority of the Act of August 31, 1954 (30 U.S.C. 551–558), and pursuant to subsection (a)(2) of section 205 of the Appalachian Regional Development Act of 1965 (Pub. L. 89–4, 79 Stat. 5). The 1992 amendments authorize the Secretary, acting through the Director of the Office of Surface Mining, to enter into cooperative agreements with States having approved abandoned mine land programs to plan and execute projects for the control or extinguishment of fires in coal formations. The amendments provide further that for States with approved AML programs, any matching share contributions are waived. The $500,000 annual limit on the total amount of funds that can be appropriated to carry out the provisions and purposes of the Act of August 31, 1954, was eliminated. Further, any such

cooperative agreement that is entered into under the Energy Policy Act of 1992 with an AML State eligible to receive funds from the Appalachian Regional Development Commission is not subject to review by that Commission.

Congress did not provide a source of funding for these cooperative agreements to extinguish or control coal formation fires in the Energy Policy Act of 1992. Congress may appropriate funding some time in the future. OSM may not use moneys from the AML Fund to extinguish or control coal formation fires if the fire is not at an eligible AML site. Section 401(d) of SMCRA states that monies from the AML Fund are only available for the purposes of SMCRA's Title IV—Abandoned Mine Reclamation.

C. Relationship of the Coal Formation Fire Control Program to the OSM AML Program

While the Department of the Interior program to extinguish or control coal outcrop fires predates SMCRA and is not funded with AML monies, it and SMCRA's AML program are interrelated. Often the same people are responsible for managing both the coal outcrop fire and the AML reclamation programs. Funds available through the coal outcrop fire program may be used to control or extinguish fires in any coal formation, except in any privately owned operating coal mine, but funds available through the AML program can only be used to control or extinguish fires involving eligible abandoned mine lands.

III. Discussion of Proposed Rule

A. Organization

The regulatory revisions are intended to implement the requirements of the Act of August 31, 1954, consistent with the purposes stated in the Act, its legislative history, and the Secretary's commitment to avoid excessive and burdensome regulations. The proposed rules would implement changes to the coal formation fire control program recently enacted as part of the Energy Policy Act of 1992, 102–486 (Oct. 24, 1992).

B. Proposed Rule

Part 880 Mine Fire Control

To reflect the new legislative provisions in the Energy Policy Act of 1992 pertaining to coal outcrop fires, OSM is amending Part 880 of Chapter VII, Subchapter R. Part 880 would be renamed "Mine Fire Control" to reflect the greater geographic expanse of its provisions. The Abandoned Mine Land Program currently has 23 States with approved programs that are now eligible to participate under the new provisions. The old Title—Mine Fire Control, Appalachia—would no longer be indicative of its provisions. OSM is proposing to amend the authority section to include The Energy Policy Act of 1992, Public Law 102–486 and delete Public Law 95–87 (SMCRA), as none of the authority for the coal formation fire control program comes from SMCRA. The current numbering system used in part 880 is not consistent with that used elsewhere in OSM regulations. Therefore, the sections would be redesignated as follows:

Existing	Redesignated
§ 880.2	§ 880.5
§ 880.3	§ 880.11
§ 880.4	§ 880.12
§ 880.5	§ 880.13
§ 880.6	§ 880.14
§ 880.7	§ 880.15
§ 880.8	§ 880.16

Section 880.2 (redesignated 880.5) would be modified by deleting one definition, modifying another, and adding three new definitions. Section 880.2(c), which limited States to only those listed in section 403 of the Appalachian Regional Development Act of 1965, would be deleted as funds would now be used in any State or by Indian tribes. It is proposed to add definitions for Approved abandoned mine reclamation program, and for two terms in the Act of August 31, 1954, to relate them to terms in SMCRA. The two terms are Operating coal mine and Inactive coal mine.

OSM proposes to modify § 880.3 (redesignated 880.11) to include the provision in the Act of August 31, 1954, that Federal funds cannot be used to fund projects to control or extinguish fires in coal formations in privately owned operating coal mines. It would also be amended to say that only projects funded by the Appalachian Regional Development Commission must be submitted by the State to the Commission and receive the approval of that body. This Commission has not funded such projects in many years.

It is proposed that section 880.4 (redesignated 880.12) be revised to state clearly the roles of OSM, States/Indian tribes, and other Federal agencies when extinguishing or controlling coal formation fires under the authority of these regulations. OSM shall, upon application by a State/Indian tribe with an approved abandoned mine reclamation program, enter into a cooperative agreement with the State/Indian tribe to control or extinguish fires in coal formations. OSM would be authorized to conduct the fire control projects in those States and with those Indian tribes not having an approved abandoned mine reclamation program. However, upon application by such a State/Indian tribe, OSM may enter into a cooperative agreement with the State/Indian tribe to fund the control or extinguishment of fires in coal formations. OSM would also be authorized to conduct the fire control projects on lands owned or controlled by the United States, with the cooperation of the agency having jurisdiction thereof. However, upon application by another Federal agency having jurisdiction for lands owned or controlled by the United States, OSM may enter into an agreement with the other Federal agency to control or extinguish such fires in coal formations. Congress did not provide a source of funding for the above cooperative agreements to extinguish or control coal formation fires in the Energy Policy Act of 1992. Congress may appropriate funding some time in the future. OSM has been funding a very small coal formation fire control program to control or extinguish such fires on lands in the west. This program is not funded with AML program funds.

The Act of August 31, 1954, requires that if a coal fire is in an inactive coal mine on lands not owned or controlled by the United States or any of its agencies, except where such project is necessary for the protection of lands or other property owned or controlled by the United States or any of its agencies: (1) the State or the person owning or controlling such lands contribute on a matching basis 50 percent of the cost of planning and executing such project; or (2) if the state or the person furnishes evidence satisfactory to the Secretary of an inability immediately to make the matching contribution, that such State or person pay the Government, within such time as the Secretary shall determine, and amount equal to 50 percent of the cost of planning and executing such project. The Energy Policy Act of 1992 waived this requirement in States with an approved abandoned mine reclamation program.

OSM proposes to remove subparagraph (d) of § 880.4 (redesignated 880.12), which stated that none of the funds contributed by the Government or the State or the local authorities shall be used for the purchase of sand, clay, stone, or other such kinds of noncombustible materials used to control or extinguish the fire. A review of the pertinent legislation found no such restriction. In many cases, it

might be impossible to extinguish or control a coal fire if Federal or State funds could not be used to purchase sand, clay, stone, chemical foams, or other noncombustible materials used to control or extinguish the fire.

Most of § 880.5 (redesignated § 880.13), Project contracts, contains guidance relative to the contracting procedures to be followed for the extinguishment or control of coal formation fires. OSM proposes to remove subparagraphs (c) and (d) pertaining to contracts as none of the legislation authorizing this program set out any special contracting requirements. Normal contracting procedures for Federally funded contracts as set out in OSM Directive GMT 10, "Federal Assistance Manual," and other relevant documents are to be followed. In many instances, fire control projects must be initiated quickly to prevent the fire from becoming much larger or to control quickly a threat to public health and safety. States entering into cooperative agreements with OSM to extinguish or control coal formation fires may need to use more expedited contracting procedures than those used for regular AML projects. States managing their emergency AML programs have often had to develop more expedited contracting procedures. Sometimes new legislation has been required to do so.

It is also proposed to change the title of § 880.5 (redesignated 880.13) to "Project implementation." Subparagraphs (a) and (b) would establish responsibilities for implementing projects to extinguish or control coal formation fires in States having an approved abandoned mine land program and in other States or on Federal lands.

OSM proposes to modify § 880.6 (redesignated 880.14) to recognize that, while some projects to extinguish or control coal formation fires may be implemented by OSM, others may be implemented by States or another Federal agency.

Finally, subsection 880.7 (redesignated 880.15) would be amended to acknowledge that private parties may, when appropriate, be providing assistance.

IV. Procedural Matters

Paperwork Reduction Act

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

Executive Order 12866

This rule has been reviewed under Executive Order 12866.

Regulatory Flexibility Act

The Department of the Interior has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule facilitates voluntary cooperative agreements between OSM and States for the purpose of extinguishing fires in coal formation outcrops.

Author

The principal author of this rule is Thomas E. Browne, Division of Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–208–2661.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA) and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of NEPA, 42 U.S.C. 4332(2)(C). It is anticipated that a Finding of No Significant Impact will be approved for the final rule in accordance with OSM procedures under NEPA. The EA is on file in the OSM Administrative Record at the address specified previously (see **ADDRESSES**). An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Executive Order 12778 on Civil Justice Reform

This proposed rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this proposed rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

This rule will have no preemptive effect on State/Tribal laws or regulations.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified?

This rule modifies the AML program regulations pursuant to the Act of August 31, 1954 (30 U.S.C. 551–558); section 205(a)(2) of the Appalachian Regional Development Act of 1965 (Pub. L. 89–4, 79 Stat. 5), and the Energy Policy Act of 1992, Public Law 102–486, as described herein, and is not intended to modify the rules or provisions of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of the Act of August 31, 1954 and the Energy Policy Act of 1992.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of the proposed revision. Prior to any judicial challenge to the application of the revision, however, administrative procedures must be exhausted.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms that are important to the understanding of this rule are set forth in 30 CFR 880.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order.

As of the date of publication in the **Federal Register**, the Attorney General has not issued any guidance on this requirement.

List of Subjects in 30 CFR Part 880

Appalachia, Fire control or extinguishment, Government contracts, Grant programs—Natural Resources, Mine safety and health.

Accordingly, it is proposed to amend 30 CFR Part 880 as set forth below:

Dated: October 15, 1993.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

CHAPTER VII—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

SUBCHAPTER R—ABANDONED MINE LAND RECLAMATION

1. The Title of Part 880 is revised to read as follows:

PART 880—MINE FIRE CONTROL

2. The authority citation for part 880 is revised to read as follows:

Authority: 30 U.S.C. 551–558 and 40 U.S.C. App. 205.

3. Sections 880.2 through 880.8 are redesignated as follows:

Old section	New section
880.2	880.5
880.3	880.11
880.4	880.12
880.5	880.13
880.6	880.14
880.7	880.15
880.8	880.16

4. Section 880.1 is revised to read as follows:

§ 880.1 Scope.

Projects for the control or extinguishment of outcrop or underground fires in coal formations under the authority of the Act of August 31, 1954 (30 U.S.C. 551–558); section 205(a)(2) of the Appalachian Regional Development Act of 1965 (Pub. L. 89–4, 79 Stat. 5), and the Energy Policy Act of 1992 (Pub. L. 102–486).

5. Section 880.5 is amended by removing definition (c); by redesignating definition (d) and (c) and revising it; and adding new definitions (d), (e), and (f) to read as follows:

§ 880.5 Definitions.

* * * * *

(c) *Local authorities* means the State or local governmental bodies organized and existing under the authority of State laws including but not limited to a county, city, township, town, or borough;

(d) *Approved abandoned mine reclamation program* means a program meeting the requirements defined in Section 405 of PL 95–87;

(e) *Operating coal mine* means a coal mine for which the regulatory authority has not terminated its jurisdiction as set out under 30 CFR 700.11(d)(1);

(f) *Inactive coal mine* means a coal mine for which the regulatory authority has terminated its jurisdiction as set out under 30 CFR 700.11(d)(1).

6. Section 880.11 is revised to read as follows:

§ 880.11 Qualifications of projects.

The purpose of all projects to control or extinguish fires in coal formations must be, the Secretary's judgment, to prevent injury and loss of life, protect public health, conserve natural resources, or protect public and private property. Federal funds cannot be used to fund projects to control or extinguish fires in coal formations in privately owned operating coal mines. Further, any such cooperative agreement that is entered into under the Energy Policy Act of 1992 with an AML State eligible to receive funds from the Appalachian Regional Development Commission is not subject to review by that Commission.

7. Section 880.12 is amended by removing paragraph (d) and revising paragraphs (a), (b) and (c) to read as follows:

§ 880.12 Cooperative agreements.

(a) OSM shall, upon application by a State or Indian tribe with an approved abandoned mine reclamation program, enter into a cooperative agreement with the State or Indian tribe to control or extinguish fires in coal informations.

(b) OSM is authorized to conduct coal formation fire control projects with States/Indian tribes not having an approved abandoned mine reclamation program. However, upon application by such a State/Indian tribe, OSM may enter into a cooperative agreement with the State/Indian tribe and the local authorities to control or extinguish fires in coal formations. OSM shall require in connection with any project for the control or extinguishment of fires in any inactive coal mine on lands not owned or controlled by the United States or any of its agencies, except where such project is necessary for the protection of lands or other property owned or controlled by the United States or any of its agencies in a such a State: (1) That the State or the person owning or controlling such lands contribute on a matching basis 50 percent of the cost of planning and executing such project, or (2) if such State or person furnishes evidence satisfactory to the Secretary of an inability immediately to make the matching contribution herein provided for, that such State or person pay the Government, within such time as the Secretary shall determine, an amount equal to 50 percent of the cost of planning and executing such project. If the project is funded by the Appalachian Regional Commission, the Federal share may be less than but shall not exceed 75 percent of the cost of the project.

(c) OSM is authorized to conduct fire control projects on lands owned or controlled by the United States. However, upon application by another Federal agency having jurisdiction for lands owned or controlled by the United States, OSM may enter into an agreement with the other Federal agency to control or extinguish fires in coal formations. There are no cost sharing requirements.

8. Section 880.13 is revised by changing the title to "Project implementation," removing paragraphs (c) and (d), and revising paragraphs (a) and (b) to read as follows:

§ 880.13 Project implementation.

(a) Under cooperative agreements with States having an approved AML reclamation plan:

(1) States will design, plan, and engineer a method of operation for control or extinguishment of the outcrop or underground mine fire, and will execute the project through a project contract, or, if the work is to be done in phases, a series of project contracts.

(2) If OSM assistance is required, OSM will be reimbursed by the State for all costs incurred including OSM employees' time.

(b) In States not having an approved AML reclamation plan and on Federal lands, OSM has the authority to design, plan, and engineer a method of operation for control or extinguishment of the outcrop or underground mine fire, and will execute the project through a project contract, or, if the work is to be done in phases, a series of project contracts. OSM, may, at its discretion, delegate authority to perform this work to States or other Federal agencies.

9. Section 880.14 has been revised to read as follows:

§ 880.14 Administration of contributions.

Financial contributions made by a State, local authorities, or another Federal agency will be deposited in trust in the Treasury of the United States for withdrawal by OSM and expenditure by the organization executing the project (OSM, a State, or another Federal agency) pursuant to the cooperative agreement and as necessary in performance of the project work. Withdrawals and expenditures from the trust fund will be made only for costs connected with the project. Any part of the money contributed by a State, local authority, or another Federal agency for an individual project that remains unexpended upon the completion or termination of projection will be

returned to the State, local authority, or other Federal agency.

10. Section 880.15 is amended by revising the section heading; by revising the introductory paragraph; and by revising paragraphs (a), (b) and (g) to read as follows:

§ 880.15 Assistance by States, local authorities, and private parties.

State, local authorities, or private parties, as may be appropriate in each particular project, and without cost or charge to project costs may:

(a) Provide assistance in planning and engineering the project as requested by the organization executing the project;

(b) Furnish best available information, data, and maps on the location of the project and the location of water, sewer, and power lines within the project area, and maps or plats showing properties and lands on which releases, consents, or rights or interests in lands have been obtained.

* * * * *

(g) Furnished noncombustible materials suitable for implementing the planned fire control work. This material may be waste or borrow material obtained at the site or brought in from off site.

* * * * *

[FR Doc. 93–31460 Filed 12–23–93; 8:45 am]

BILLING CODE 4310–05–M

federal register

Monday
December 27, 1993

Part VII

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: January 26, 1994.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, see Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: Larry Maruskin, Office of Fire Prevention and Arson Control, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1141.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 24, 1992, 57 FR 55314, and published changes approximately monthly since then.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 58 FR 17020 on March 31, 1993. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated: December 21, 1993.

John P. Carey,

General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 12/17/93 UPDATE

	Property Name	PO Box/Rt. No and Street Address	City	State/Zip	Telephone
	ADDITIONS				
AZ					
	LA QUINTA INN #4908	2510 W. GREENWAY ROAD	PHOENIX	AZ 85023	602–993–0800
CA					
	RAMADA MAINGATE—ANAHEIM	1460 S. HARBOR BLVD.	ANAHEIM	CA 92802	714–772–6777
	BEST WESTERN TROPICS MOTOR HOTEL.	9274 E. HOBSON WY.	BLYTHE	CA 92225	619–922–5101
	RAMADA INN	825 EAST F ST.	OAKDALE	CA 95361	209–847–8181
	RED LION/REDDING	1830 HILLTOP DR.	REDDING	CA 96001	916–221–8700
	HORTON GRAND HOTEL	311 ISLAND AVE.	SAN DIEGO	CA 92101	619–544–1836
	BEST WESTERN ROYAL OAK MOTOR HOTEL.	214 MADONNA RD.	SAN LUIS OBISPO	CA 93405	805–544–4410
CT					
	RAMADA INN CAPITOL HILL	440 ASYLUM ST.	HARTFORD	CT 06103	203–246–6591
	CLARION HOTEL	5 CONSTITUTION PLAZA	HARTFORD	CT 06103	203–278–2000
	HOLIDAY INN—EAST	363 ROBERTS STREET	HARTFORD	CT 06108	203–528–9611
	HOWARD JOHNSON LODGE	1052 BOSTON POST RD.	MILFORD	CT 06460	203–878–4611
	HOLIDAY INN—NEW HAVEN	30 WHALLEY AVENUE	NEW HAVEN	CT 06511	203–777–6221
	HOLIDAY INN—NORTH HAVEN	201 WASHINGTON AVE.	NORTH HAVEN	CT 06473	203–239–4225
	WOODSTOCK CONFERENCE CENTER	ROUTE 169	SOUTH WOODSTOCK.	CT 06281	
	HOWARD JOHNSON LODGE	2636 SOUTH MAIN STREET	WATERBURY	CT 06706	203–756–7961
	RAMADA INN-WETHERSFIELD	1330 SILAS DEANE HIGHWAY	WETHERSFIELD	CT 06109	203–563–2311
	BUDGETEL INN	64 ELLA GRASSO TURNPIKE	WINDSOR LOCKS	CT 06096	203–623–3336
GA					
	RAMADA INN ALBANY	2505 NORTH SLAPPEY BLVD.	ALBANY	GA 31701–1095	912–883–3211
	BUDGETEL INN LENOX	2535 CHANTILLY DRIVE	ATLANTA	GA 30324	404–321–0999
	DAYS INN NORTHLAKE	2158 RANCHWOOD DR.	ATLANTA	GA 30345	404–934–6000
	HOLIDAY INN CENTRAL ATLANTA	418 ARMOUR DR	ATLANTA	GA 30324	404–873–4661

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 12/17/93 UPDATE—Continued

Property Name	PO Box/Rt. No and Street Address	City	State/Zip	Telephone
STOUFFER CONCOURSE HOTEL	#1 HARTSFIELD CENTRE PKWY..	ATLANTA	GA 30354	404–209–9999
BUDGETEL INN BRUNSWICK	105 TOURIST DR.	BRUNSWICK	GA 31520	912–265–7725
RAMADA INN BRUNSWICK	3241 GLYNN AVE.	BRUNSWICK	GA 31523	912–264–8611
DAYS INN GWINNETT PLACE	1948 DAY DR.	DULUTH	GA 30136	404–476–1211
GLENNVILLE INN	812 NORTH MAIN ST.	GLENNVILLE	GA 30427	912–654–3407
BUDGETEL INN ROSWELL	575 OLD HOLCOMB BRIDGE RD..	ROSWELL	GA 30076	404–552–0200
HOWARD JOHNSON CUMBERLAND	2700 CURTIS DR.	SMYRNA	GA 30080	404–435–4990
HI				
EWA KAI APARTMENT HOTEL	61–161 KUHINA ST.	EWA BEACH, OAHU	HI 96706	808–689–7946
HANALEI BAY RESORT	5380 HONOIKI RD.	HANALEI, KAUAI	HI 96714	808–826–6522
ASTON WAIKIKI BEACH TOWER	2470 KALAKAUA AVE.	HONOLULU, OAHU	HI 96815	808–926–6400
ASTON WAIKIKI BEACHSIDE HOTEL	2452 KALAKAUA AVE.	HONOLULU, OAHU	HI 96815	808–931–2100
BREAKERS HOTEL	250 BEACHWALK	HONOLULU, OAHU	HI 96815	808–923–3181
EXECUTIVE CENTRE HOTEL	1088 BISHOP ST	HONOLULU, OAHU	HI 96813	808–539–3000
HAWAII POLO INN	1696 ALA MOANA BLVD	HONOLULU, OAHU	HI 96815	808–949–0061
HAWAII POLO INN	1696 ALA MOANA BLVD	HONOLULU, OAHU	HI 96815	808–949–0061
HAWAIIANA HOTEL CORPORATION	260 BEACH WALK	HONOLULU, OAHU	HI 96815	808–923–3811
HOLIDAY INN HONOLULU INTERNATIONAL AIRPORT.	3401 N. NIMITZ HWY	HONOLULU, OAHU	HI 96819	808–836–0661
MARINE SURF WAIKIKI	364 SEASIDE AVE	HONOLULU, OAHU	HI 96815	808–923–0277
OUTRIGGER ALA WAI TOWER	1700 ALA MOANA BLVD	HONOLULU, OAHU	HI 96815	808–942–7722
SHERATON PRINCESS KAIULANI HOTEL	120 KAIULANI AVE	HONOLULU, OAHU	HI 96815	808–922–5811
WAIKIKI PARC HOTEL	2233 HELUMOA RD	HONOLULU, OAHU	HI 96815	808–921–7272
WAIKIKI ROYAL SUITES	255 BEACH WALK	HONOLULU, OAHU	HI 96815	808–926–5641
ALANA WAIKIKI HOTEL	410 ALA MOANA BLVD	HONOLULU, OAHU	HI 96815	808–941–7275
ASTON KONA BY THE SEA	75–6106 ALII DR	KAILUA KONA	HI 96740	808–327–2300
KONA VILLAGE RESORT	PO BOX 1299	KAILUA KONA	HI 96745	808–325–5556
ASTON KAUAI BEACHBOY	4–484 KUHIO HWY	KAPAA, KAUAI	HI 96746	808–823–0916
COCO PALMS RESORT	4–241 KUHIO HWY	KAPAA, KAUAI	HI 96746	808–823–0760
HOTEL CORAL REEF	1516 KUHIO HWY	KAPAA, KAUAI	HI 96746	808–822–4481
PLANTATION HALE	484 KUHIO HWY	KAPAA, KAUAI	HI 96746	808–822–4941
MAUI SUN HOTEL	175 E. LIPOA ST	KIHEI	HI 96753	808–875–9000
ASTON MAUI LU RESORT	575 S. KIHEI RD	KIHEI, MAUI	HI 96753	808–879–5881
ASTON MAUI VISTA	2191 S. KIHEI RD	KIHEI, MAUI	HI 96753	808–879–7966
MAUNA KEA BEACH HOTEL	1 MAUNA KEA BEACH DR	KOHALA	HI 96743	808–882–7222
MAUNA LANI BAY HOTEL & BUNGALOWS	1 MAUNA LANI DR	KOHALA	HI 96743	808–885–6622
COLONY'S POIPU KAI RESORT	1941 POIPU RD	KOLOA	HI 96746	808–742–9676
ASTON MAUI PARK	3626 LOWER HONDAPIILANI HWY.	LAHAINA, MAUI	HI 96761	808–669–6622
COLONY'S NAPILI SHORES RESORT	5315 HONDAPIILANI HWY	LAHAINA, MAUI	HI 96761	808–669–8061
SHERATON MAUI HOTEL	2605 KAANAPALI PKWY	LAHAINA, MAUI	HI 96761	808–661–0031
THE WHALER ON KAANAPALI BEACH	2481 KAANAPALI PKWY	LAHAINA, MAUI	HI 96761	808–661–4861
ASTON KAANAPALI SHORES RESORT	3445 HONOAPIILANI HWY	LAHAINA, MAUI	HI 96761	808–667–2211
THE LODGE AT KOELE	PO BOX 774 1 KEOMOKU HWY.	LANAI CITY, LANAI	HI 96763	808–565–7300
ASTON KAUAI BEACH VILLAS	4330 KAUAI BEACH DR	LIHUE, KAUAI	HI 96766	808–245–7711
OUTRIGGER KAUAI BEACH	4331 KAUAI BEACH DR	LIHUE, KAUAI	HI 96766	808–245–1955
KALUAKOI HOTEL AND GOLF CLUB	PO BOX 1977	MAUNALOA, MOLOKAI.	HI 96770	808–552–2555
SHERATON MAKAHA RESORT AND COUNTRY CLUB.	84–626 MAKAHA VALLEY RD	WAIANEA, OAHU	HI 96792	808–695–9511
HYATT REGENCY WAIKOLOA	HCO2BOX 5500	WAIKOLOA	HI 96743	808–885–1234
MAUI INTECONTINENTAL RESORT	3700 WAILEA ALANUI DR	WAILEA, MAUI	HI 96753	808–879–1922
PALMS AT WAILEA RESORT	3200 WAILEA ALANUI DR	WAILEA, MAUI	HI 96753	808–879–5800
KAUAI RESORT HOTEL	3–5920 KUHIO HWY	WAILUA, KAUAI	HI 96746	808–245–3931
IHILANI RESORT AND SPA	92–1001 OLANI ST	WEST OAHU, OAHU	HI 96707	808–679–0079
IN				
ANDERSON COMFORT INN	2205 E. 59TH ST	ANDERSON	IN 46013	317–644–4422
AUBURN INN	225 TOURING DRIVE	AUBURN	IN 46706	219–925–6363
ECONO LODGE	4501 E. THIRD ST	BLOOMINGTON	IN 47401	812–332–2141
ECONO LODGE	713 PLAZA DR	CHESTERTON	IN 46304	219–929–4416
SUPER 8 MOTEL	1025 COREY BLVD	CRAWFORDSVILLE	IN 46933	317–364–9999
HOLIDAY INN EXPRESS NORTHEAST	9790 N. BY NORTHEAST BLVD.	FISHER	IN 46038	317–578–2000
CARLTON LODGE GOSHEN	1930 LINCOLNWAY EAST	GOSHEN	IN 46526	219–534–3133
EMBASSY SUITES DOWNTOWN INDIANAPOLIS.	110 W. WASHINGTON ST	INDIANAPOLIS	IN 46204	317–236–1800
QUALITY INN EAST	3525 N. SHADELAND AVE	INDIANAPOLIS	IN 46226	317–549–2222
WYNDHAM INDIANAPOLIS	251 E. PENNSYLVANIA PKWY	INDIANAPOLIS	IN 46280	317–574–4600

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 12/17/93 UPDATE—Continued

Property Name	PO Box/Rt. No and Street Address	City	State/Zip	Telephone
INDIANAPOLIS HILTON	31 W. OHIO ST	INDIANAPOLIS	IN 46204	317–635–2000
COMFORT INN	522 ESSEX DR	KOKOMO	IN 46901	317–452–5050
KOKOMO COMFORT INN	522 ESSEX DRIVE	KOKOMO	IN 46901	317–452–5050
RED ROOF INN	4201 STATE RT. 26 E	LAFAYETTE	IN 47905	317–448–4671
RADISSON HOTEL AT STAR PLAZA	800 EAST 81ST AVE	MERRILLVILLE	IN 46410	219–769–6311
RED ROOF INN	110 WEST KIEFFER RD	MICHIGAN CITY	IN 46360	219–874–5251
FOUR SEASONS MOTEL	2400 W. FOURTH ST	MT. VERNON	IN 47620	812–838–4821
MUNCIE COMFORT INN	4011 W. BETHEL	MUNCIE	IN 47305	317–282–6666
HOLIDAY INN	3400 S. MADISON ST	MUNCIE	IN 47302	317–358–3031
COMFORT INN AMISH ACRES	1234 W. MARKET ST	NAPPANEE	IN 46550	219–773–2011
HOLIDAY INN RICHMOND	4700 NATIONAL ROAD E	RICHMOND	IN 47374	317–962–5551
SEYMOUR HOLIDAY INN	2025 E. TIPTON ST	SEYMOUR	IN 47274	812–522–6767
RESIDENCE INN BY MARRIOTT SOUTH BEND.	716 N. NILES AVE	SOUTH BEND	IN 46617	219–289–5555
MA				
HOWARD JOHNSON	575 COMMONWEALTH AVE	BOSTON	MA 02215	617–267–3100
HOWARD JOHNSON HOTEL	187 CHELMSFORD ST	CHELMSFORD	MA 01824	508–256–7511
MI				
CARLTON LODGE ADRIAN	1629 W. MAUMEE	ADRIAN	MI 49221	317–263–7000
HAMPTON INN	1561 N. OPDYKE RD	AUBURN HILLS	MI 48326	313–370–0044
CARLTON LODGE BENTON HARBOR	1592 MALL DR	BENTON HARBOR	MI 49022	616–925–3000
RED ROOF INN	1630 MALL DR	BENTON HARBOR	MI 49022	616–927–2484
RADISSON RIVERFRONT HOTEL	ONE RIVERFRONT CENTER WEST.	FLINT	MI 48502	313–239–1234
RED ROOF INN EAST	3701 E. CORK ST	KALAMAZOO	MI 49001	616–382–6350
RED ROOF INN WEST	5425 W. MICHIGAN AVE	KALAMAZOO	MI 49009	616–375–7400
WYNDHAM NOVI	42100 CRESCENT BLVD	NOVI	MI 48375	313–344–8800
ECONO LODGE	1858 US 131 S	PETOSKEY	MI 49770	616–348–3324
RED ROOF INN	2580 CROOKS RD	ROCHESTER HILLS	MI 48309	313–853–6400
RADISSON PLAZA HOTEL AT TOWN CENTER.	1500 TOWN CENTER DR	SOUTHFIELD	MI 48075	313–827–4000
DRURY INN TROY	575 W. BIG BEAVER RD	TROY	MI 48084	313–528–3330
MN				
HOLIDAY INN EXPRESS	1010 BANDANA BLVD W	ST. PAUL	MN 55108	612–647–1637
NJ				
HOJO INN	832 N. BLACK HORSE PIKE	BLACKWOOD	NJ 08012	609–228–4040
SWAN MOTEL AND EXECUTIVE VILLAGE	PO BOX 1700 201–311 E EDGAR RD.	LINDEN	NJ 07036	908–862–4500
BENEDICT MOTEL AND APARTMENTS	PO BOX 1700 401 W. EDGAR RD.	LINDEN	NJ 07036	908–862–7700
SHERATON CROSSROADS HOTEL & TOWERS.	CROSSROADS CORPORATE CENTER.	MAHWAH	NJ 07495	201–529–1660
NOVOTEL HOTEL PRINCETON	100 INDEPENDENCE WAY	PRINCETON	NJ 08822	609–520–1200
NASSAU INN	10 PALMER SQ	PRINCETON	NJ 08542	609–921–7500
CEDARS MOTEL	1622 ROUTE 9	TOMS RIVER	NJ 08755	908–349–3557
PA				
RESIDENCE INN BY MARRIOTT—PHILA AIRPORT.	4630 ISLAND AVENUE	PHILADELPHIA	PA 19153	215–492–1611
HOLIDAY INN CITY LINE—PHILADELPHIA	4100 PRESIDENTIAL BLVD	PHILADELPHIA	PA 19131	215–477–0200
RAMADA HOTEL ON THE SQUARE	20 PUBLIC SQUARE	WILKES-BARRE	PA 18702	717–824–7100
VA				
QUALITY HOTEL ARLINGTON	1200 N. COURTHOUSE ROAD	ARLINGTON	VA 22201–0000	703–524–4000
RED ROOF INN #106	100 GRESHAMWOOD PLACE	RICHMOND	VA 23225–0000	804–745–0600
RAMADA INN	1500 EASTRIDGE ROAD	RICHMOND	VA 23229–0000	804–285–9061
WA				
RED LION ABERDEEN	521 W. WISHKAH	ABERDEEN	WA 98520	206–532–5210
HOLIDAY INN EVERETT	101 128TH ST. SE	EVERETT	WA 98208	206–745–2555
HOLIDAY INN EXPRESS VANCOUVER	9107 NE VANCOUVER	VANCOUVER	WA 98662	206–253–5000
RED LION INN YAKIMA	818 N. FIRST ST.	YAKIMA	WA 98901	509–453–0391
WY				
SHILO INN CASPER EVANSVILLE	PO BOX 246	EVANSVILLE	WY 82636	307–641–6565
CORRECTIONS/CHANGES				
CT				
MANOR HOUSE	PO BOX 447 MAPLE AVE.	NORFOLK	CT 06058	203–542–5690
CHESTERFIELD COUNTRY LODGE	RT 85, 1596 HARTFORD RD.	OAKDALE	CT 06370	203–442–0039
HI				
ASTON HONOLULU PRINCE HOTEL	415 NAHUA ST.	HONOLULU, OAHU	HI 96815	808–922–1616
ASTON INN ON THE PARK	1920 ALA MOANA BLVD.	HONOLULU, OAHU	HI 96815	808–946–8355
ASTON ISLAND COLONY HOTEL	445 SEASIDE AVE.	HONOLULU, OAHU	HI 96815	808–923–2345
ASTON WAIKIKI SUNSET HOTEL	229 PAOAKALANI AVE.	HONOLULU, OAHU	HI 96815	808–922–0511

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 12/17/93 UPDATE—Continued

	Property Name	PO Box/Rt. No and Street Address	City	State/Zip	Telephone
	BEST WESTERN PLAZA HOTEL	3253 N. NIMITZ HWY.	HONOLULU, OAHU	HI 96819	808–836–3636
	COLONY'S PACIFIC MONARCH	142 ULUNIU AVE.	HONOLULU, OAHU	HI 96815	808–923–9805
	OUTRIGGER ALA WAI TERRACE	1684 ALA MOANA BLVD.	HONOLULU, OAHU	HI 96815	808–949–7384
	PLEASANT HOLIDAY ISLE HOTEL	270 LEWERS ST.	HONOLULU, OAHU	HI 96815	808–923–0777
	SHERATON MOANA SURFRIDER	2365 KALAKAUA AVE.	HONOLULU, OAHU	HI 96815	808–922–3111
	THE WESTIN KAUAI	KALAPAKI BEACH	KAUAI	HI 96766	808–245–5050
	FOUR SEASONS RESORT	3900 WAILEA ALANUI DR.	WAILEA, MAUI	HI 96753	808–874–8000
	GRAND WAILEA RESORT AND SPA	3850 WAILEA ALANUI DR.	WAILEA, MAUI	HI 96753	808–875–1234
	KEA LANI HOTEL SUITES AND VILLAS	4100 WAILEA ALANUI DR.	WAILEA, MAUI	HI 96753	808–
	MAUI INTERCONTINENTAL RESORT	3700 WAILEA ALANUI DR.	WAILEA, MAUI	HI 96753	808–879–1922
IN					
	HOWARD JOHNSON	2508 US HIGHWAY 41	EVANSVILLE	IN 47711	812–425–1092
	AIRPORT QUALITY INN	3939 FERGUSON RD.	FORT WAYNE	IN 46809	219–747–9171
	HOLIDAY INN EXPRESS SOUTH KEYSTONE.	3514 S. KEYSTONE AVE.	INDIANAPOLIS	IN 46227	317–788–3100
	HOLIDAY INN OF MICHIGAN CITY	5820 S. FRANKLIN ST.	MICHIGAN CITY	IN 46360	219–879–0311
PA					
	COMFORT INN PENN'S LANDING	100 N. CHRISTOPHER COLUMBUS BL.	PHILADELPHIA	PA 19106	215–627–7900
VA					
	NATURAL BRIDGE OF VIRGINIA INC	P.O. BOX 57, U.S. HIGHWAY 11.	NATURAL BRIDGE	VA 24578–0057	703–291–2121
VT					
	CORTINA INN	RT. 4 KILLINGTON RD.	KILLINGTON	VT 05751	800–451–6108
	DELETIONS				
IN					
	ECONO LODGE	4501 E. 3RD	BLOOMINGTON	IN 47401	812–332–2141
	ECONO LODGE HOTEL	713 PLAZA RD.	CHESTERTON	IN 46304	219–929–4416
	HILTON INDIANAPOLIS	31 W. OHIO ST.	INDIANAPOLIS	IN 46204	317–635–2000
	RESIDENCE INN	716 N. NILES AVE.	SOUTH BEND	IN 46601	219–289–5555

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CFR CHECKLIST

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500–599	(869–019–00101–8)	6.00	[4] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600-End	(869-019-00102-6)	8.00	Apr. 1, 1993
27 Parts:			
1-199	(869-019-00103-4)	37.00	Apr. 1, 1993
200-End	(869-019-00104-2)	11.00	[5] Apr. 1, 1991
28 Parts:			
1-42	(869-019-00105-1)	27.00	July 1, 1993
43-end	(869-019-00106-9)	21.00	July 1, 1993
29 Parts:			
0-99	(869-019-00107-7)	21.00	July 1, 1993
100-499	(869-019-00108-5)	9.50	July 1, 1993
500-899	(869-019-00109-3)	36.00	July 1, 1993
900-1899	(869-019-00110-7)	17.00	July 1, 1993
1900-1910 (§§ 1901.1 to 1910.999)	(869-019-00111-5)	31.00	July 1, 1993
1910 (§§ 1910.1000 to end)	(869-019-00112-3)	21.00	July 1, 1993
1911-1925	(869-019-00113-1)	22.00	July 1, 1993
1926	(869-017-00112-1)	14.00	July 1, 1992
1927-End	(869-017-00113-9)	30.00	July 1, 1992
30 Parts:			
1-199	(869-019-00116-6)	27.00	July 1, 1993
200-699	(869-019-00117-4)	20.00	July 1, 1993
700-End	(869-019-00118-2)	27.00	July 1, 1993
31 Parts:			
0-199	(869-019-00119-1)	18.00	July 1, 1993
200-End	(869-019-00120-4)	29.00	July 1, 1993
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-019-00121-2)	30.00	July 1, 1993
191-399	(869-019-00122-1)	36.00	July 1, 1993
400-629	(869-019-00123-9)	26.00	July 1, 1993
630-699	(869-019-00124-7)	14.00	[6] July 1, 1991
700-799	(869-019-00125-5)	21.00	July 1, 1993
800-End	(869-019-00126-3)	22.00	July 1, 1993
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125-199	(869-019-00128-0)	25.00	July 1, 1993
200-End	(869-019-00129-8)	24.00	July 1, 1993
34 Parts:			
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300-399	(869-019-00131-0)	20.00	July 1, 1993
400-End	(869-019-00132-8)	37.00	July 1, 1993
35	(869-019-00133-6)	12.00	July 1, 1993
36 Parts:			
1-199	(869-019-00134-4)	16.00	July 1, 1993
200-End	(869-019-00135-2)	35.00	July 1, 1993
37	(869-019-00136-1)	20.00	July 1, 1993
38 Parts:			
0-17	(869-019-00137-9)	31.00	July 1, 1993
18-End	(869-019-00138-7)	30.00	July 1, 1993
39	(869-019-00139-5)	17.00	July 1, 1993
40 Parts:			
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52	(869-017-00139-2)	33.00	July 1, 1992
53-60	(869-017-00140-6)	36.00	July 1, 1992
61-80	(869-017-00141-4)	16.00	July 1, 1992
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190-259	(869-019-00149-2)	17.00	July 1, 1993
260-299	(869-017-00147-3)	36.00	July 1, 1992
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700-789	(869-017-00151-1)	23.00	July 1, 1992
790-End	(869-017-00152-0)	25.00	July 1, 1992

Title	Stock Number	Price	Revision Date
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-019-00156-5)	10.00	July 1, 1993
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102-200	(869-019-00158-1)	11.00	[6] July 1, 1991
201-End	(869-019-00159-0)	12.00	July 1, 1993
42 Parts:			
1-399	(869-017-00157-1)	23.00	Oct. 1, 1992
400-429	(869-017-00158-9)	23.00	Oct. 1, 1992
430-End	(869-017-00159-7)	31.00	Oct. 1, 1992
43 Parts:			
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45 Parts:			
1-199	(869-017-00164-3)	20.00	Oct. 1, 1992
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500-1199	(869-017-00166-0)	30.00	Oct. 1, 1992
1200-End	(869-017-00167-8)	20.00	Oct. 1, 1992
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80-End	(869-017-00181-3)	24.00	Oct. 1, 1992
48 Chapters:			
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[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.

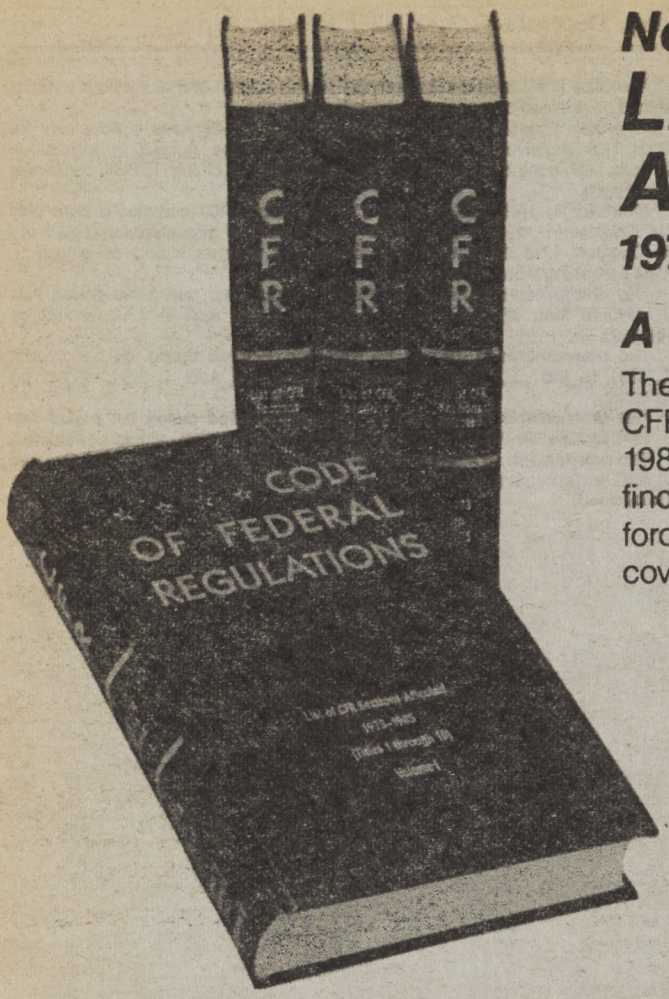
[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[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, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[7] 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.



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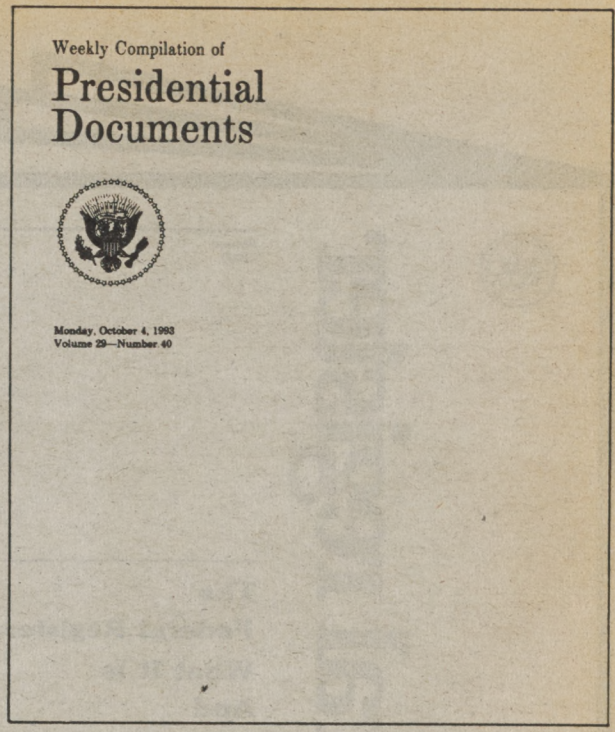

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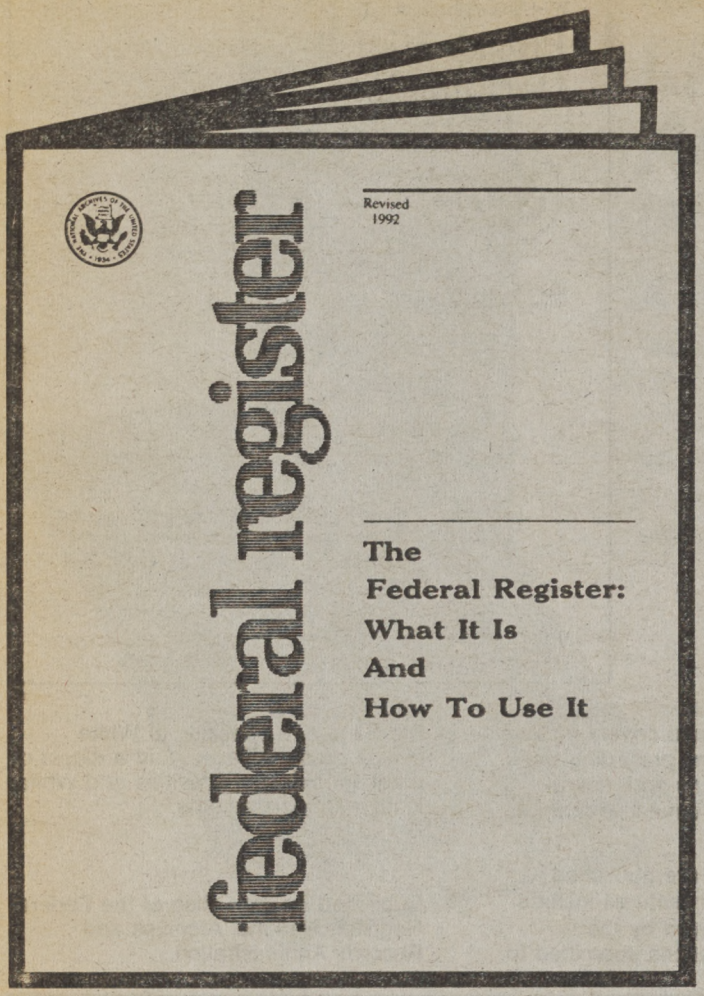

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