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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

WHEN: March 16 at 9:00 am
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

OAKLAND, CA

WHEN: March 30 at 9:00 am
WHERE: Oakland Federal Building, 1301 Clay Street, Conference Rooms A, B, and C, 2nd Floor, Oakland, CA
RESERVATIONS: Federal Information Center 1–800–726–4995

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 6653 of March 2, 1994

American Red Cross Month, 1994

By the President of the United States of America

A Proclamation

Over a century ago, Clara Barton founded the American Red Cross to provide hope, compassion, and care to victims of catastrophe and destruction. Today over 150 countries uphold the idea of neutral and impartial assistance to all people in times of great pain, disaster, or war. In 2,600 chapters across the United States, and on 200 U.S. military installations around the world, over 1.4 million American Red Cross volunteers and more than 23,000 paid staff work diligently to save lives and to assist those in crisis.

It is fitting that in this month, which celebrates the coming of spring and the rebirth of nature, we take the time to acknowledge the many outstanding accomplishments of the American Red Cross. As the Honorary Chairman of this praiseworthy organization, I am proud to commend everyone who is associated with its life-saving efforts. The dedicated members of this organization have enabled thousands of people who thought hope had abandoned them to experience new and bright beginnings. Since 1881 the American Red Cross has helped millions who have entered its doors seeking shelter, food, financial assistance, training, and most important, compassion.

The last 12 months will go down in history as a litany of disasters of every description, from the Midwest floods to the California fires and earthquakes to the winter storms that gripped a large part of the country. The American Red Cross rose to each challenge in its usual timely and efficient manner, restoring hope for so many in need. The Red Cross is in the business of responding to disasters, large and small, 365 days a year It also provides blood to hospital patients, who otherwise might not survive

For many, the Great Flood of 1993 did not become a frightening headline until well into the summer. For the American Red Cross, however, the floodwaters had been a serious concern since early spring. Nine months after the flooding started, over 20,000 Red Cross workers had participated in the relief operation, more than 2.8 million meals had been served, and approximately 35,000 families had received assistance from Red Cross caseworkers.

While thousands of Red Cross workers helped victims recover from the floodwaters in the Midwest, Red Cross personnel in California faced a different challenge—fire. Hundreds of families fleeing the raging California fires found haven in Red Cross shelters. Fire victims were provided comfort and strength as they tried to rebuild their lives out of the ashes.

As 1993 came to a close and many of us began preparing for holiday meals, the Red Cross also was preparing meals—for cold and hungry people, victims of the winter storms that lashed out across the Nation. Once again, feeding vans were busily dispensing hot coffee and sandwiches, comfort and hope. The Red Cross set up over 100 shelters in 6 states, bringing security and warmth to those in need.

The year 1994 began with nature's awesome display of power, tearing Southern California asunder in the Northridge earthquakes. Again the Red Cross was there to help those left homeless and hungry.

Thanks to the American Red Cross blood program, thousands receive life-giving donations and are able to enjoy one more birthday, one more anniversary, one more day of sunshine. The American Red Cross collects, processes, and distributes more than half the Nation's blood supply—all while ensuring that it is the safest in the world. Over 6 million times last year, donors came to the Red Cross to give the gift of life to others.

Through the network of the International Red Cross and Red Crescent Movement, families around our globe were able to locate and communicate with loved ones with whom they had lost contact due to wars or refugee movements. Prisoners of war saw hope come into their cells in the form of a Red Cross emblem. American Red Cross delegates called such places as Armenia, Croatia, and Cambodia home last year as they brought medical care, skilled relief workers, food, and reassurance to countries suffering from the ravages of disaster, disease, and war.

The Red Cross has earned our abiding respect, and we look forward to seeing its symbol of hope continue to shine brightly across this great land. A very grateful Nation thanks the American Red Cross for a job extremely well done.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of March 1994, as "American Red Cross Month." I urge all Americans to continue their generous support of the Red Cross and its chapters nationwide through contributions of time, funds, and blood donations.

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

William J. Clinton

[FR Doc 94–5417
Filed 3–4–94, 12:28 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6654 of March 2, 1994

Women's History Month, 1994

By the President of the United States of America

A Proclamation

When author Zora Neale Hurston was growing up in Eatonville, Florida, at the beginning of the century, her mother encouraged her to "jump at the sun"—to set lofty goals—even if she were not certain to reach them. In many ways, Zora did "jump at the sun," writing books, articles, and plays that have earned her a place among America's finest writers and anthropologists. Her mother's words became a powerful metaphor for her life, and Zora's brilliant works reflect the vibrant history of the many women whose lives she studied.

Zora Neale Hurston might never have imagined that women would one day have the opportunity to take her mother's teaching literally. But from Sally Ride to Mae Jemison to Kathryn Sullivan, astronauts have soared closer to the sun than most humans ever dreamed. As we celebrate Women's History Month, 1994, Americans take special pride in the scope of women's achievements, exemplified by the daring spirit of these pioneering individuals. We watched in awe recently as astronaut Sullivan performed complex repairs on the Hubble space telescope by the light of the rising sun. And we shared her happiness as she basked in the love of her family at the end of a successful mission. From author to astronaut to able parent, women have embraced a myriad of challenging roles throughout our Nation's history.

But America has not yet fulfilled its promise of equality for all people. While more women than ever now hold public office in our country, more women than ever must also bear sole responsibility for caring for their families. We rely on women's knowledge and expertise in every aspect of life, and yet we as a society fail to provide many of our families the care and support they so desperately need. We take satisfaction in knowing that women have gained equality under the law, but we must also recognize the ways in which true equality is still only a dream. Zora's "sun" eludes our grasp. This month, we rededicate ourselves to reaching it.

On this occasion, we celebrate the lives of women too long missing from our history books. We listen to the voices of women too long absent from our national memory. Most important, we look forward to a day when society need not remind itself to note the extraordinary accomplishments of women. We dream of a time when, in passing the lessons of this generation from teacher to student, from parent to child, we tell a story of women and men working side by side. We will say that it took all people, striving together, to build a just and compassionate world of liberty, charity, and peace.

The Congress, by Public Law 103–22, has designated March 1994 as "Women's History Month" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim March 1994 as Women's History Month. I invite all Americans to observe this month with appropriate programs, ceremonies, and activities, and to remember throughout the year the rich and varied contributions that women make to our world.

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

William J. Clinton

[FR Doc. 94–5418
Filed 3–4–94; 12:29 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6655 of March 3, 1994

To Amend the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501 and 502 of the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2461 and 2462), and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Ukraine as a beneficiary developing country for purposes of the Generalized System of Preferences ("GSP").

2. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule ("HTS") the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 501 and 604 of the Trade Act, do proclaim that:

(1) General note 4(a) to the HTS, listing those countries whose products are eligible for benefits of the GSP, is modified by inserting "Ukraine" in alphabetical order in the enumeration of independent countries.

(2) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(3) The modifications to the HTS made by paragraph (1) of this proclamation shall be effective with respect to articles that are: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the **Federal Register**:

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

William J. Clinton

[FR Doc. 94–5441
Filed 3–4–94; 2:15 pm]
Billing code 3195–01–P

Editorial note: For the President's message to Congress on trade with Ukraine, his news conference with Ukrainian President Leonid Kravchuk, the Joint Statement on Development of U.S.-Ukrainian Friendship and Partnership, and the Joint Statement on Economic and Commercial Cooperation, see issue 9 of the *Weekly Compilation of Presidential Documents.*

Presidential Documents

Executive Order 12901 of March 3, 1994

Identification of Trade Expansion Priorities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 141 and 301–310 of the Trade Act of 1974, as amended (the "Act") (19 U.S.C. 2171, 2411–2420), and section 301 of title 3, United States Code, and to ensure that the trade policies of the United States advance, to the greatest extent possible, the export of the products and services of the United States and that trade policy resources are used efficiently, it is hereby ordered as follows:

Section 1. *Identification.* (a) Within 6 months of the submission of the National Trade Estimate Report (required by section 181(b) of the Act (19 U.S.C. 2241)) for 1994 and 1995, the United States Trade Representative ("Trade Representative") shall review United States trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. The Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and shall publish in the **Federal Register**, a report on the priority foreign country practices identified.

(b) In identifying priority foreign country practices under paragraph (a) of this section, the Trade Representative shall take into account all relevant factors, including:

(1) the major barriers and trade distorting practices described in the National Trade Estimate Report;
(2) the trade agreements to which a foreign country is a party and its compliance with those agreements;
(3) the medium-term and long-term implications of foreign government procurement plans; and
(4) the international competitive position and export potential of United States products and services.

(c) The Trade Representative may include in the report, if appropriate, a description of the foreign country practices that may in the future warrant identification as priority foreign country practices. The Trade Representative also may include a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, existing bilateral trade agreements, or in trade negotiations with other countries and progress is being made toward their elimination.

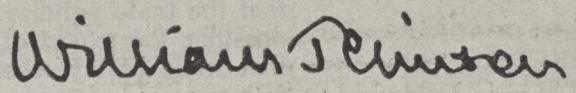
Sec. 2. *Initiation of Investigation.* Within 21 days of the submission of the report required by paragraph (a) of section 1, the Trade Representative shall initiate under section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations under title III, chapter 1, of the Act with respect to all of the priority foreign country practices identified.

Sec. 3. *Agreements for the Elimination of Barriers.* In the consultations with a foreign country that the Trade Representative is required to request under section 303(a) of the Act (19 U.S.C. 2413(a)) with respect to an investigation initiated by reason of section 2 of this order, the Trade Representative shall seek to negotiate an agreement that provides for the elimination of the practices that are the subject of the investigation as quickly

as possible or, if that is not feasible, provides for compensatory trade benefits. The Trade Representative shall monitor any agreement entered into under this section pursuant to the provisions of section 306 of the Act (19 U.S.C. 2416).

Sec. 4. *Reports.* The Trade Representative shall include in the semiannual report required by section 309 of the Act (19 U.S.C. 2419) a report on the status of any investigation initiated pursuant to section 2 of this order and, where appropriate, the extent to which such investigations have led to increased opportunities for the export of products and services of the United States.

Sec. 5. *Presidential Direction.* The authorities delegated pursuant to this order shall be exercised subject to any subsequent direction by the President in a particular matter.



THE WHITE HOUSE,
March 3, 1994.

[FR Doc. 94–5434
Filed 3–4–94; 1:24 pm]
Billing code 3195–01–P

Editorial note: For the President's statement on this Executive order, see issue 9 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 93–137–1]

Importation of Ratites and Hatching Eggs of Ratites

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are providing that ratites and hatching eggs of ratites may not be imported into the United States unless specified identification and recordkeeping requirements regarding their origin and movement are met in the country of export. This action is necessary to help ensure that ratites and hatching eggs of ratites that could pose a disease risk to poultry and livestock in the United States are not imported into this country.

DATES: Interim rule effective March 8, 1994. Consideration will be given only to comments received on or before May 9, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–137–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Hand, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5907.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) regulate the importation of certain animals and birds, including ostriches and other flightless birds known as ratites, and their hatching eggs, to prevent the introduction of communicable diseases of livestock and poultry.

Section 92.101 of the regulations imposes general restrictions on the importation of ratites and hatching eggs of ratites, including the requirement that they be produced by a pen-raised flock and, in the case of ratites, be maintained in a pen-raised flock. This requirement is necessary to help ensure that ratites imported into the United States are not wild-caught birds that may have been exposed to communicable diseases and that may not have a known health history.

Section 92.103(a) of the regulations requires that an application to import ratites or hatching eggs of ratites specify the number of ratites or hatching eggs intended for importation. Section 92.103(a)(2)(iii) provides that a permit to import ratites or hatching eggs of ratites will be denied or withdrawn unless a representative of the Animal and Plant Health Inspection Service (APHIS) has visited the premises where the flock of origin is kept within the 12-month period before the intended importation, and has determined that the flock is pen-raised and contains sufficient breeding pairs to produce the number of ratites or hatching eggs intended for importation.

Section 92.104 requires that ratites or hatching eggs of ratites imported into the United States be accompanied by a certificate that certifies, among other things, that the flock of origin is pen-raised and the ratites covered by the certificate were produced by and maintained in that flock. These provisions are necessary to help ensure that ratites and hatching eggs that are not produced by a pen-raised flock, and that consequently pose a potential health risk, are not brought into the flock and subsequently imported into the United States.

However, based on our experience enforcing the regulations, we have found that, even with the requirements described above, it can sometimes be difficult to monitor the number of ratites and hatching eggs being exported from certain flocks. We believe this difficulty in monitoring has led to occasions where smuggled or wild-caught ratites or hatching eggs of such ratites have been brought into a flock, then imported into the United States, purportedly as a pen-raised part of that flock.

The regulations in § 92.106(b) contain requirements for the quarantine of ratites and hatching eggs of ratites upon arrival in the United States. Although we consider these requirements for quarantine to be effective in identifying and preventing the entry of ratites with communicable diseases, the increased risk presented by smuggled or wild-caught ratites jeopardizes the health of other ratites in quarantine and unnecessarily increases the risk of the entry of a ratite with a communicable disease.

Therefore, in this interim rule, we are establishing provisions that require identification of all ratites and hatching eggs of ratites in flocks from which ratites or hatching eggs of ratites are intended for importation into the United States, and that require strict monitoring and recordkeeping of the number of ratites and hatching eggs produced in, brought into, or exported from a flock. These requirements, discussed below, will help ensure that only ratites and hatching eggs of ratites pen-raised on approved premises are imported into the United States.

We are requiring in § 92.101(b)(3)(i)(B) (newly added in this interim rule) that each ratite produced in a flock from which ratites or hatching eggs of ratites are intended for importation into the United States be identified with an identification number by means of a microchip implanted in the pipping muscle at 1-day of age. We are also requiring that each ratite added to the flock from outside the flock be identified by means of microchip upon arrival in the flock, and that each ratite already in the flock as of the effective date of this interim rule be identified before the next visit to the premises by an APHIS representative under § 92.101(a)(2)(iii) (discussed above).

Unlike our requirement for the 1-day-old chicks, however, we are not requiring that the microchip be implanted in any specified location on the older birds.

The microchip identification required by this interim rule will make possible a cross-referencing system by which the Department and the national government of the country from which the ratites are to be exported can help ensure that only ratites and hatching eggs of ratites from pen-raised flocks on approved premises are imported into the United States.

We are requiring microchip identification, rather than some other form of identification, because we have determined that it is the most effective and humane form of identification for ratites. External forms of identification such as tags can be easily removed or switched. This is less likely to happen with an imbedded microchip. Because of the thin hide of a ratite, we do not consider hot-iron branding to be effective or humane.

Based on importations to date, we expect virtually all ratites imported into the United States to be those required to be microchipped at 1-day of age. The pipping muscle, located behind the head of a ratite chick, is enlarged at the time of hatching to assist the chick in breaking through the shell. Requiring the microchip to be implanted in the same place for each such ratite will facilitate our reading of the microchips and make it easier to determine if a ratite has been identified (discussed below under the heading "Microchip Readers"). Because the pipping muscle decreases in size as a ratite grows, it would not be practicable to require that it be the site of implantation for older ratites. However, as noted above, we expect few older ratites to be imported into the United States, and are therefore not requiring that such ratites be microchipped at any particular location on their body.

As part of the cross-referencing system made possible by the microchip identification, we are requiring that the country from which ratites or their hatching eggs are exported have in place procedures and requirements, discussed below, for monitoring the number of ratites or hatching eggs of ratites produced on each premises over a set production season. (We are adding to the regulations a definition of production season, discussed below under the heading "Definition of Production Season.")

Under § 92.101(b)(3)(i)(I) of this interim rule, a production ceiling for each premises must be set. The ceiling is to be calculated jointly by a full-time salaried veterinary officer of the national government of the country of export and the APHIS representative who visits the premises prior to an import permit being issued. The ceiling is based on the number of eggs that the ratites in the flock can reasonably be expected to produce over a given production season. The ceilings established will take into account not only the number of ratites in the flock, but also factors such as the age and the type of the ratites. Establishing this ceiling will help prevent ratites and hatching eggs of ratites from being "laundered" through the flock for importation into the United States.

Under § 92.101(b)(3)(i)(C) of this interim rule, on the date that each hatching egg is produced in a flock from which ratites or hatching eggs of ratites are intended for importation into the United States, the hatching egg must be marked in indelible ink with the date of production.

Under § 92.101(b)(3)(i)(D) of this interim rule, the owner or manager of a premises from which ratites or hatching eggs of ratites are intended for importation into the United States is required to maintain on a daily basis registers listing the following: (1) Number of live ostriches hatched in the flock, added to the flock, or removed from the flock, including microchip identification number; (2) number of eggs produced in the flock and date of production, and number of eggs removed from the flock and date of production; and (3) number of eggs in incubator/hatcher and date of production. The owner or manager of the premises must submit a copy of the registers to the National Veterinary Service of the country of export on a quarterly basis. When the national government receives these registers, it must in turn submit a copy to the APHIS Administrator on a quarterly basis.

Under § 92.101(b)(3)(i)(F) of this interim rule, the national government of the country of export, using these registers, must maintain a registry of premises. In this registry, the national government is required to list each ratite according to its microchip number. The national government is also required to maintain a count of hatching eggs of ratites produced on the premises. Under § 92.10(b)(3)(i)(G) of this interim rule, no premises may be added to the registry until a veterinary officer of the national government or an employee of that government responsible for the protection of fish and wildlife visits the premises and determines that all ratites and hatching eggs of ratites on the premises are identified as required.

Under § 92.101(b)(3)(i)(J) of this interim rule, the country from which the eggs are exported must also conduct random inspections of premises that have been added to the registry. These inspections must be conducted at least twice for each production season for each premises, and must be carried out either by a veterinary officer of the national government of the country of export or an employee of that government responsible for the protection of fish and wildlife. The inspector must determine whether all ratites and hatching eggs of ratites are identified as required, and will use the markings on the eggs to determine whether the number of eggs in the flock are within the ceiling established for the flock. Ratites or hatching eggs not identified as required will be ineligible for the export certificate required under § 92.104(a) of the regulations (discussed below). The results of these inspections, as well as the results of the initial inspection described in the preceding paragraph, must be recorded on the copy of the quarterly reports that the country of export must send to the Administrator. Based on this information, APHIS will deny or withdraw an import permit for ratites or hatching eggs of ratites from any premises on which all ratites and hatching eggs are not marked as required.

These requirements, taken together, will make it easier to detect incidence of birds or eggs being smuggled onto a premises. The initial visit to the premises, described above, along with the calculation of a production ceiling, will establish how many ratites are on the premises and the number of hatching eggs they can reasonably be expected to produce. The registers, microchip identification, and subsequent site inspections will help ensure that the number of ratites and hatching eggs on or leaving the premises are consistent with those initial calculations.

Under this interim rule, the Department and the national government of the country of export will be able to monitor the number of ratites and eggs exported from the flocks to the United States by means of the health certificate required under § 92.104 of the regulations. Under the existing regulations, this certificate must accompany ratites or hatching eggs of ratites imported into the United States. It is issued by a full-time salaried veterinary officer of the national government of the exporting country. Under the existing regulations, it contains information regarding the health of the flock, and the origin and

handling of ratites and hatching eggs of ratites imported into the United States.

In this interim rule, we are adding to §§ 92.104 (c) and (d) the requirement that a certificate contain the certification that the flock from which ratites or hatching eggs of ratites are exported has not exceeded the ceiling on production established under this interim rule. We are also requiring that the certificate indicate the number of ratites or hatching eggs of ratites being shipped to the United States. By comparing this information with the information on the registers and with the ceiling on production calculated under this interim rule, both the Department and the national government of the country of origin will be able to determine the number of ratites and hatching eggs left available for export during a given production season. We are also requiring that the certificate indicate that all ratites in the flock from which the hatching eggs come were identified in accordance with § 92.101(b)(3)(i)(B).

We recognize that flock owners may wish to replenish or increase their breeding stock by bringing ratites into the flock from another flock. In order to account for birds being added to the flock, we are requiring in § 92.101(b)(3)(i)(G) that each premises from which ratites or hatching eggs of ratites are exported to the United States receive approval from the National Veterinary Service of that country before ratites are added to the premises from outside the premises. We are also requiring that the national government provide that ratites may not be added to a flock during a production season. This restriction is necessary to facilitate the quota system established by this interim rule.

Microchip Readers

We are also providing that, as a condition of importing ratites into the United States, the person intending to import the ratites provide the APHIS veterinary inspector at the intended port of entry with a reader capable of reading the microchip identification of each of the ratites. This will enable APHIS to determine whether the ratites are identified as required. Importing ratites not properly identified, and not providing a reader capable of reading the microchips, will be a violation of the regulations and the ratites will be refused entry.

Denial or Withdrawal of Import Permit

Section 92.103 of the existing regulations requires, among other things, that an importer apply for and obtain an import permit from APHIS before importing ratites or hatching eggs of ratites into the United States. We are providing in this interim rule that a permit will be denied or withdrawn if the importer or a person responsibly connected with the importer's business, or the operator of the farm of the flock of origin, or a person responsibly connected with the owner of the flock of origin, is or has been convicted of any crime under any law regarding the import or export of goods, regarding the illegal movement of goods within a country, or involving fraud, bribery, extortion or any other crime involving a lack of the integrity needed for the conduct of operations affecting the importation of ratites, as determined by the Administrator.

For the purposes of the regulations, a person shall be deemed to be responsibly connected with the importer's business or the owner of the flock of origin if such person has an ownership, mortgage, or lease interest in the physical plant of the importer's business or the farm of the flock of origin, or if such person is a partner, officer, director, holder or owner of 10 per centum or more of the voting stock of the importer's business or the farm of the flock of origin, or is an employee of the importer or the owner of the flock of origin.

These provisions regarding denial or withdrawal of a permit are based on those set forth in § 92.106(c)(6) regarding the denial of approval and removal of approval of a commercial bird quarantine facility. We consider these provisions necessary to reduce the risk that attempts will be made to import smuggled birds into the United States.

We are also setting forth in § 92.103(a)(2)(vii) provisions that provide for the notification of persons who have a permit denied or withdrawn, and that provide such persons, upon request in the case of a dispute of material facts, the opportunity for a hearing with respect to the merits or validity of such action, in accordance with rules of practice which shall be adopted for the proceeding.

Definition of Pen-Raised

We are also amending the definition of pen-raised in § 92.100, to provide that a flock will not be considered to be pen-raised if ratites captured in the wild are added to it after the effective date of this interim rule. As discussed earlier in this interim rule, wild-caught ratites pose a significant risk of having been exposed to communicable diseases, and may not have a known health history. Adding such ratites to an otherwise pen-raised flock significantly increases the chances of disease being transmitted to other ratites in the flock. However, prior to the publication of this interim rule, we had no reliable mechanism for determining whether wild-caught ratites had been brought into a flock. With the establishment of the identification and monitoring provisions of this interim rule, we now are able to make such a determination. Therefore, we are amending the definition of pen-raised as described above, to help ensure that ratites exposed to ratites captured in the wild are not imported into the United States.

Definition of Production Season

In this interim rule, we use the term production season. We are defining production season to mean that period of time, usually approximately 9 months each year, from the time ratites in a flock begin laying eggs until the ratites cease laying eggs. Ratites by nature follow a set cycle for laying eggs, and, for reasons of health and productivity, must be given a period of rest between "production seasons." In most cases, a production season lasts approximately 9 months, but this may vary according to factors such as the type, age, and geographical location of the ratites.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to help ensure that ratites imported into the United States, and ratites hatched from ratite hatching eggs imported into the United States, do not transmit diseases to poultry and livestock in the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

This interim rule requires that foreign producers of ratites or ratite hatching eggs intended for importation into the

United States maintain registers of ratites and hatching eggs on their premises and update them daily. It also requires that ratites in a flock from which ratites or hatching eggs of ratites are intended for importation into the United States be identified with a microchip. Additionally, it requires that ratite hatching eggs in the flock be marked with indelible ink.

At present, 29 ratite farms in 7 countries are approved to ship ratites or ratite hatching eggs to the United States. The number of approved foreign farms varies each month due to annual recertification requirements. There are 2,000 to 3,000 ratite farms in the United States. Virtually all of them are small businesses, as are the approximately 20 domestic entities that currently import ratites and ratite hatching eggs into the United States.

We anticipate that requiring APHIS-approved ratite producers to maintain registers and update them daily will have a negligible impact on the domestic ratite market. However, the identification requirements in this interim rule are expected to increase slightly the cost of importing ratites and ratite hatching eggs. Requiring that ratite hatching eggs be marked with indelible ink is expected to increase operational costs of foreign producers by about $0.50 per egg. Requiring each live ratite to be identified by microchip is expected to cost foreign producers about $6.35 per ratite. Foreign producers will likely increase their prices to cover the cost of proposed identification requirements.

If the cost of identifying each ratite and ratite hatching egg is passed along to United States buyers, the identification and marking requirements in this interim rule will increase the cost of importing ratites and ratite hatching eggs by an average of $3.00 each. Current market prices for ratites released from quarantine in the United States range from $1,565 for a 45-day-old ratite chick to $50,000 for an adult ratite.

We estimate that the requirements of this interim rule will increase annual costs to foreign producers by approximately $198,375. We expect that a total of approximately 52,500 ratites and hatching eggs of ratites will be imported into the United States in 1994. Of these, we estimate that approximately 23 percent will survive quarantine, with a total value of approximately $34,543,425. Therefore, the estimated cost of the requirements of this interim rule will be less than .6 percent of the retail value of ratites released from quarantine.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 92

Animal disease, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622, 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Subpart A to Part 92—[Amended]

2. In part 92, Subpart A—Birds, footnotes 2 through 13 and the references to them are redesignated as footnotes 3 through 14, respectively.

3. In § 92.100, the definition of *pen-raised* is revised, and a definition of *production season* is added to read as follows:

§ 92.100 Definitions.

* * * * *

Pen-raised. Cared for in a fenced enclosure, such that the ratites are kept apart from wild ratites, poultry, and other animals; can be readily observed, and be restrained for inspection and treatment. A flock is not considered to be pen-raised if ratites captured in the wild have been added to it after March 8, 1994.

* * * * *

Production season. That period of time, usually approximately 9 months each year, from the time ratites in a flock begin laying eggs until the ratites cease laying eggs.

* * * * *

4. Section 92.101 is amended by revising paragraph (b)(3)(i) to read as follows:

§ 92.101 General prohibitions; exceptions.

* * * * *

(b) * * *

(3)(i) Except for ratites imported as zoological birds, ratites and hatching eggs of ratites shall not be imported into the United States unless the following conditions are met: (A) The ratites or hatching eggs are produced by a pen-raised flock, and, in the case of ratites, maintained in a pen-raised flock;

(B) Each ratite produced in the flock is identified with an identification number by means of a microchip implanted in the pipping muscle at 1-day of age, each ratite added from outside the flock is identified in like manner upon arrival in the flock, except that the microchip need not be implanted in the pipping muscle, and each ratite already in the flock as of March 8, 1994 is identified in like manner, prior to the next visit to the flock premises by an APHIS representative under § 92.103(a)(2)(iii), except that the microchip need not be implanted in the pipping muscle;

(C) On the date it is produced, each hatching egg produced in the flock is marked in indelible ink with the date of production.

(D) The owner or manager of the premises from which the ratites or hatching eggs are intended for importation into the United States maintains on a daily basis a register listing the following: (*1*) Number of live ratites hatched in the flock or added to the flock, and number of live ratites removed from the flock, and the microchip number for each of these ratites;

(*2*) Number of eggs produced in the flock and date of production, and

number of eggs removed from the flock and date of production; and

(3) Number of eggs in incubator/hatcher and date of production;

(E) The owner or manager of the premises submits a copy of the registers to the National Veterinary Service of the country of export on a quarterly basis. The country of export in turn submits a copy of the registers to the Administrator on a quarterly basis; [2]

(F) The country from which the ratites or hatching eggs are exported to the United States maintains a registry of premises that wish to export ratites or hatching eggs of ratites to the United States, that lists each ratite according to the microchip number required under paragraph (b)(3)(i)(D) of this section, and also maintains a count of hatching eggs of ratites produced on or added to the premises;

(G) Before a premises is added to the registry, either a veterinary officer of the national government of the country of export, or an employee of that government responsible for the protection of fish and wildlife, visits the premises and determines that all ratites and hatching eggs of ratites are identified as required under paragraphs (b)(3)(i)(B) and (b)(3)(i)(C) of this section.

(H) The country from which the ratites or hatching eggs of ratites are exported to the United States requires each premises from which ratites or hatching eggs of ratites are exported to the United States to receive approval from the National Veterinary Service of that country before ratites are added to the premises from outside the premises, and also prohibits the addition of ratites to a flock during production seasons;

(I) The country from which ratites or hatching eggs of ratites are exported to the United States establishes a maximum number of hatching eggs of ratites that may be produced on each premises over a set production season. The ceiling for each premises is calculated jointly by a full-time salaried veterinary officer of the national government of the country of export and the APHIS representative who conducts the site visit required under § 92.103(a)(2)(iii);

(J) The country of export conducts random inspections of each premises intending to export ratites or hatching eggs of ratites to the United States, at least twice during each production season, to ensure that all ratites and hatching eggs of ratites on the premises are identified as required under paragraphs (b)(3)(i)(D) and (b)(3)(i)(E) of this section. These inspections must be conducted by either a veterinary officer of the national government of the country of export or an employee of that government responsible for the protection of fish and wildlife. If any ratites or hatching eggs are not identified as required, the country of export must not issue the export certificate required under § 92.104(a). The country of export must record, on the copy of the quarterly report required to be sent to the Administrator under paragraph (b)(3)(i)(E) of this section, whether all ratites and hatching eggs are identified as required;

(K) The country of export requires each premises on which ratites or hatching eggs of ratites intended for export to the United States are kept to submit to the National Veterinary Service of that country a copy of the certificate required under § 92.104(a);

(L) The person intending to import ratites into the United States provides the APHIS veterinary inspector at the intended port of entry with a reader capable of reading the microchip implanted in each of the ratites.

* * * * *

5. In § 92.103, new paragraphs (a)(2)(iv), (a)(2)(v), (a)(2)(vi), and (a)(2)(vii) are added to read as follows:

§ 92.103 Import permits for birds [8]; and reservation fees for space at quarantine facilities maintained by APHIS.

(a) * * *

(2) * * *

(iv) A permit to import ratites or hatching eggs of ratites will be denied or withdrawn if an inspection of the premises of the flock or origin, carried out by the national government of the country of export under § 92.101 (b)(3)(i)(G) and (b)(3)(i)(J), indicates that the ratites and hatching eggs are not identified and marked as required under §§ 92.101 (b)(3)(i)(B) and (b)(3)(i)(C).

(v) A permit will be denied or withdrawn if: (A) The importer or a person responsibly connected with the importer's business is or has been convicted of any crime under any law regarding the import or export of goods, regarding the illegal movement of goods within a country, or involving fraud, bribery, extortion or any other crime involving a lack of the integrity needed for the conduct of operations affecting the importation of ratites, as determined by the Administrator.

(B) The operator of the farm of the flock of origin, or a person responsibly connected with the owner of the flock of origin, is or has been convicted of any crime under any law regarding the import or export of goods, regarding the illegal movement of goods within a country, or involving fraud, bribery, extortion or any other crime involving a lack of the integrity needed for the conduct of operations affecting the importation of ratites, as determined by the Administrator.

(vi) For the purposes of this section, a person shall be deemed to be responsibly connected with the importer's business or the owner of the flock of origin if such person has an ownership, mortgage, or lease interest in the physical plant of the importer's business or the farm of the flock of origin, or if such person is a partner, officer, director, holder or owner or 10 per centum or more of the voting stock of the importer's business or the farm of the flock of origin, or is an employee of the importer or the owner of the flock of origin.

(vii) A permit may be denied or withdrawn at any time by the Administrator, for any of the reasons provided in paragraphs (a)(2) (ii), (iii), (iv), or (v) of this section. Before such action is taken, the importer or the operator of the farm of the flock of origin will be informed of the reasons for the proposed action and, upon request in case of a dispute of material facts, shall be afforded an opportunity for a hearing with respect to the merits or validity of such action, in accordance with rules of practice which shall be adopted for the proceeding. However, withdrawal of a permit shall become effective pending final determination in the proceeding, when the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal shall be effective upon oral or written notification, whichever is earlier, to the importer or the operator of the farm of the flock of origin. In the event of oral notification, written confirmation shall be given to the importer or the operator of the farm of the flock of origin as promptly as circumstances permit. This withdrawal shall continue in effect pending the completion of the proceeding and any judicial review thereof, unless otherwise ordered by the Administrator.

* * * * *

6. Section 92.104 is amended by redesignating paragraphs (c)(12) and (c)(13) as paragraphs (c)(15) and (c)(16), and by adding new paragraphs (c)(12), (c)(13), and (c)(14), and paragraphs

[2] Copies should be mailed to Administrator, c/o Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[8] For other permit requirements for birds, the regulations issued by the U.S. Department of the Interior (50 CFR parts 14 and 17) should be consulted.

(d)(8), (d)(9), and (d)(10) to read as follows:

§ 92.104 Certificate for pet birds, commercial birds, zoological birds, and research birds.

* * * * *

(c) * * *

(12) The number of ratites contained in the shipment;

(13) That the number of ratites and hatching eggs of ratites exported from the flock of origin has not exceeded the ceiling established under § 92.101(b)(2)(iii)(I);

(14) That all ratites in the flock from which the hatching eggs come were identified in accordance with § 92.101(b)(3)(i)(B);

* * * * *

(d) * * *

(8) The number of hatching eggs contained in the shipment;

(9) That the number of ratites hatching eggs of ratites exported from the flock of origin has not exceeded the ceiling established under § 92.101(b)(2)(iii)(I); and

(10) That all ratites in the flock from which the hatching eggs come were identified in accordance with § 92.101(b)(3)(i)(B).

Done in Washington, DC, this 1st day of March 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–5164 Filed 3–7–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–145–AD; Amendment 39–8847; AD 94–05–09]

Airworthiness Directives; Beech Model 400A Airplanes Equipped With Certain Tosington Cabin Seat Frames

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400A airplanes, that requires an inspection to detect fatigue-related cracking in certain cabin seat frames; measurement to determine gap size between the bearing shafts and certain seat frames; and repair, if necessary. This amendment is prompted by in-service inspection reports of fatigue-related cracking radiating outward from the bushings welded into the cabin seat frames. The actions specified by this AD are intended to prevent separation of the cabin seat frames from their bases during an emergency landing.

DATES: Effective April 7, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 7, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Tosington Enterprises, Inc., 2261 Madera Road, Simi Valley, California 93065. 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 FAA, Small Airplane Directorate, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Laurence Engler, Aerospace Engineer, Airframe Branch, ACE–120W, FAA, Small Airplane Directorate, Wichita ACO, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Beech Model 400A airplanes was published in the **Federal Register** on November 8, 1993 (58 FR 59223). That action proposed to require a one-time visual inspection to detect fatigue-related cracking in certain cabin seat frames; measurement to determine gap size between the bearing shafts and certain seat frames; 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.

There are approximately 41 Beech Model 400A airplanes of the affected design in the worldwide fleet. The FAA estimates that 29 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour 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 $1,595, or $55 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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, Incorporation by reference, 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 adding the following new airworthiness directive:

94–05–09 Beech Aircraft Corporation: Amendment 39–8847. Docket 93–NM–145–AD.

Applicability: Model 400A airplanes; serial numbers RK–1 through RK–40 inclusive, and RK–45; equipped with Tosington Cabin Seat Frames having serial numbers prior to 5606, on which Modification Kit Number 303–307 has not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the cabin seat frames from their bases during an emergency landing, accomplish the following: (a) Within 200 hours time-in-service after the effective date of this AD, perform a visual inspection to detect fatigue-related cracking extending radially outward from the bushings welded into the cabin seat frames, in accordance with Tosington Enterprises, Inc., Service Bulletin 001, dated July 1993. If any cracking is found, prior to further flight, repair by welding in accordance with the service bulletin.

(b) Within 200 hours time-in-service after the effective date of this AD, measure the gap size between the bearing shaft and the lower aft and/or forward seat frames in accordance with Tosington Enterprises, Inc., Service Bulletin 001, dated July 1993.

(1) If the gap size is 0.32 inch or greater, prior to further flight, repair by reinforcing the cabin seat frame in accordance with the service bulletin.

(2) If the gap size is less than 0.32 inch, no further action is required.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small 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, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

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

(e) The inspection, repairs, and measurement shall be done in accordance with Tosington Enterprises, Inc., Service Bulletin 001, dated July 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Tosington Enterprises, Inc., 2261 Madera Road, Simi Valley, California 93065. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 7, 1994.

Issued in Renton, Washington, on February 28, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4951 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 91–NM–65–AD; Amendment 39–8802; AD 94–02–04]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the airworthiness directive (AD) number for the above-captioned AD that was published in the **Federal Register** on Tuesday, February 1, 1994 (59 FR 4567). A typographical error in the processing of the document resulted in two AD's having the same AD number. In all other respects, the original document is correct.

DATES: Effective March 3, 1994.

The incorporation by reference of Boeing Service Bulletin 727–53–0197, Revision 1, dated April 9, 1992, as listed in the regulation is approved by the Director of the Federal Register as of March 3, 1994 (59 FR 4567, February 1, 1994).

FOR FURTHER INFORMATION CONTACT: Phil Forde 206–227–2771.

SUPPLEMENTARY INFORMATION: A final rule Airworthiness Directive (AD), applicable to all Boeing Model 727 series airplanes, was published in the **Federal Register** on Tuesday, February 1, 1994 (59 FR 4567), with an effective date of March 3, 1994. As published, that AD contained a typographical error: The AD number for that rule was shown incorrectly as "94–04–04," rather than the correct AD number of "94–02–04." Because of this error, two AD's were published with the same AD number. This document corrects the AD number of amendment 39–8802 to 94–02–04. Since none of the regulatory information has been changed, the final rule is not being republished.

Issued in Renton, Washington, on March 2, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5240 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–77–AD; Amendment 39–8840; AD 94–05–02]

Airworthiness Directives; Fokker Model F–28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F–28 series airplanes, that requires the implementation of a corrosion prevention and control program either by accomplishing specific tasks or by revising the maintenance inspection program to include such a program. This amendment is prompted by reports of incidents involving corrosion and fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal; these incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by this AD are intended to prevent degradation of the structural capabilities of the airplane due to the problems associated with corrosion.

DATES: Effective April 7, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 7, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. 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: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F–28 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on November 9, 1993 (58 FR 59418). That action proposed to require the implementation of a corrosion prevention and control program either by accomplishing specific tasks or by revising the maintenance inspection program to include such a program.

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

Both commenters support the proposed rule.

After careful review of the available data, including the comments 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 46 airplanes of U.S. registry will be affected by this AD, that it will take an average of approximately 7 work hours per basic task to accomplish the 77 basic tasks called out in the Fokker Corrosion Prevention and Control Program (CPCP) Document; this represents a total average of 539 work hours (this figure includes not only inspection time, but access and closure time as well). The average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators for the 4-year average inspection cycle is estimated to be $1,363,670, or $29,645 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that this cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

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, Incorporation by reference, 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 adding the following new airworthiness directive:

94–05–02 Fokker: Amendment 39–8840. Docket 93–NM–77–AD.

Applicability: Model F–28 Mark 1000, MK 2000, MK 3000, and MK 4000 series airplanes (does not include Model MK 0100 series airplanes), certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: This AD references Fokker Document SE–253, "F–28 Corrosion Control Program," including all revisions through September 15, 1992, (hereafter referred to as "the Document"), for basic tasks, definitions of corrosion levels, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

Note 2: As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Standardization Branch, ANM–113, FAA, Transport Airplane Directorate." For those operators operating under Federal Aviation Regulation (FAR) Part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR Part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

Note 3: The FAA recommends that priority for implementing the corrosion prevention and control program, specified in this AD, be given to older aircraft and areas requiring a significant upgrade of previous maintenance procedures to meet the program requirements.

To preclude degradation of the structural capabilities of the airplane due to the problems associated with corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the basic tasks specified in section 2.4 of the Document in accordance with the procedures of the Document and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD.

Note 4: A "basic task," as defined in section 2.4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of sealants or corrosion inhibitors; and other follow-on actions.

Note 5: Airplane "areas" are those items listed in columnar form in the "ACTION" statement of each task, as listed in the Document.

Note 6: Basic tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial basic task requirements of paragraph (a)(1) of this AD.

Note 7: Where non-destructive inspection (NDI) methods are employed, in accordance with section 2.4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR section 43.13.

(1) Complete the initial basic task of each aircraft zone specified in section 2.4 of the Document as follows: (i) For airplane areas that have not yet exceeded the "Initial Inspection Time (IIT)" for a basic task as of one year after the effective date of this AD: Initial compliance must occur no later than the IIT, or no later than one Repeat Inspection Time (RIT) interval measured from a date one year after the effective date of this AD, whichever occurs later.

(ii) For airplane areas that have exceeded the IIT for a particular basic task as of one year after the effective date of this AD: Initial compliance must occur within one RIT interval for that task, or within 6 years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iii) Notwithstanding paragraphs (a)(1)(i) and (a)(1)(ii) of this AD, accomplish the initial basic task, for each area that exceeds the IIT for that area, at a minimum rate of one such area every two years, beginning one year after the effective date of this AD.

Note 8: This paragraph does not require inspection of any area that has not exceeded the IIT for that area.

Note 9: This minimum rate requirement may cause an undue hardship on some small operators. In those circumstances, requests for adjustments to the implementation rate will be evaluated on a case-by-case basis under the provisions of paragraph (h) of this AD.

(2) Repeat each basic task at a time interval not to exceed the RIT interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial basic task for each airplane area must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR section 91.417 or section 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial basic task, extensions of RIT intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an RIT interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days after such adjustment of the schedule.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any airplane area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the basic task in the affected aircraft zones on all Model F–28 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following: (A) A proposed schedule for performing the basic tasks in the affected aircraft zones on the remaining Model F–28 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note 10: Notwithstanding the provisions of Section 2.1 of the Document, which would permit corrosion that otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA (ref. **Note 2** of this AD) for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the basic tasks in the affected aircraft zones of the remaining Model F–28 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance with paragraphs (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination, implement a means, approved by the FAA, to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of basic tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first basic task in each aircraft zone to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each basic task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first basic task for each aircraft zone to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Within 7 days after the date of detection of any Level 3 corrosion, and within 3 months after the date of detection of any Level 2 corrosion, submit a report to Fokker of such findings, in accordance with section 2.5 of the Document.

Note 11: Reporting to the FAA of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note 12: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(j) Reports of inspection results required by this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(k) The basic tasks shall be done in accordance with Fokker Document SE–253 "F28 Corrosion Control Program," revised through September 15, 1992, which contains the following list of effective pages:

Task No.	Page No.	Revision level shown on page	Date shown on page
	Introduction		
	1–2, 5–8, 10–15, 17–19	3	Jan. 1, 1992.
	3–4, 9, 16, 20, 25	3–1	Sept. 15, 1992.
	21–24, 26	1	Jan. 1, 1992.
	Corrosion inspections		
010–00	010/01	3	Jan. 1, 1992.
020–00	020/01		
030–00	030/01		
040–00	040/01		
050–00	050/01		
100–00	100/01		
110–00	110/01		
120–00	120/01		
120–01	120/02		
130–00	130/01		
130–01	130/02		
140–00	140/01		
140–01	140/02		
150–00	150/01		
160–00	160/01		
200–00	200/01		
250–00	250/01		
250–01	250/02		
250–02	250/03		
250–03	250/04		
270–00	270/01		
280–00	280/01		
290–00	290/01		
290–01	290/02		
290–02	290/03		
290–03	290/04		
290–04	290/05		
300–00	300/01		
300–01 cont.	300/03		
300–02	300/04		
400–00	400/01		
410–00	410/01		
420–00	420/01		
520–00	520/01		
520–01	520/02	3	Jan. 1, 1992
520–02	520/03		
530–00	530/01		
537–00	537/01		
537–01	537/02		
537–02	537/03		
538–00	538/01		
538–01	538/02		
538–02	538/03		
540–00	540/01		
556–00	556/01		
560–00	560/01		
570–00	570/01		
570–01	570/02		
570–02	570/03		
570–03	570/04		
700–00	700/01		
710–00	710/01		
720–00	720/01		
730–00	730/01		
740–00	740/01		
750–00	750/01		
760–00	760/01		
800–00	800/01		
810–00	810/01		
810–01	810/02		
820–00	820/01		
910–00	910/01		
910–02	910/03		
920–00	920/01		
920–01	920/02		

Task No.	Page No.	Revision level shown on page	Date shown on page
930–00	930/01		
940–00	940/01		
950–00	950/01		
980–00	980/01		
300–01	300/02	3–1	Sept. 15, 1992.
300–03	300/05		
560–01	560/02		
820–01	820/02		
910–01	910/02		
920–02	920/03		
940–01	940/02		
980–01	980/02		
Appendix A			
	1–11	3	Jan. 1, 1992.
Appendix B			
	1	3–1	Sept. 15, 1992.
Appendix C			
	1–3	3	Jan. 1, 1992.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. 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.

(l) This amendment becomes effective on April 7, 1994.

Issued in Renton, Washington, on February 18, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–4277 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No 94–ACE–05]

Modification of Class D Airspace; Waterloo, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the official description of the Class D airspace associated with the Waterloo Municipal Airport, Waterloo, Iowa, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16, 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect of this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Waterloo Municipal Airport Traffic Control Tower (ATCT), Waterloo, Iowa.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT:

Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Waterloo control zone was in effect 24 hours a day, 7 days a week. However, the Waterloo ATCT was a part-time facility with the hours published in the North Central Airport/Facility Directory. The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Waterloo ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Waterloo Municipal Airport, Waterloo, Iowa. The purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Waterloo ATCT. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 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 amended Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "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 will not have a significant 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).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

ACE IA D Waterloo, IA [Revised]

Waterloo Municipal Airport, IA
(lat. 42°33'25" N, long. 92°24'01" W)

That airspace entending upward from the surface to and including 3,400 feet MSL within a 4.3-mile radius of Waterloo Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–5263 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ACE–07]

Modification of Class D Airspace; Cape Girardeau, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the official description of the Class D airspace associated with the Cape Girardeau Municipal Airport, Cape Girardeau, Missouri, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16, 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect of this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Cape Girardeau Municipal Airport Traffic Control Tower (ATCT), Cape Girardeau, Missouri.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Cape Girardeau control zone was in effect 24 hours a day, 7 days a week. However, the Cape Girardeau ATCT was a part-time facility with the hours published in the North Central Airport/Facility Directory. The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Cape Girardeau ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Cape Girardeau Municipal Airport, Cape Girardeau, Missouri. The purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Cape Girardeau ATCT. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 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 amended Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "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 will not have a significant 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).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

ACE MO D Cape Girardeau, MO [Revised]

Cape Girardeau Municipal Airport, MO
(lat. 37°13'31" N, long. 89°34'14" W)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4.1-mile radius of Cape Girardeau Municipal Airport. This Class D airspace area

is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–5264 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ACE–08]

Modification of Class D Airspace; Columbia, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the official description of the Class D airspace associated with the Columbia Regional Airport, Columbia, Missouri, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect of this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Columbia Regional Airport Traffic Control Tower (ATCT), Columbia, Missouri.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106, telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Columbia control zone was in effect 24 hours a day, 7 days a week. However, the Columbia ATCT was a part-time facility with the hours published in the North Central Airport/Facility Directory. The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Columbia ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Columbia Regional Airport, Columbia, Missouri. The purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Columbia ATCT. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 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 amended Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "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 will not have a significant 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).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

ACE MO D Columbia, MO [Revised]

Columbia Regional Airport, MO
(lat. 38°49'05" N, long. 92°13'11" W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.3-mile radius of Columbia Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region

[FR Doc. 94–5265 Filed 3–7–94 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ACE–04]

Modification of Class D Airspace; Forbes Field, Topeka, KS

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: This action modifies the official description of the Class D airspace associated with the Topeka Forbes Field, Topeka, Kansas, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16, 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect of this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Topeka Forbes Field Airport Traffic Control Tower (ATCT), Topeka, Kansas.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Topeka Forbes Field and ATCT control zones were in effect 24 hours a day, 7 days a week. However, the Topeka Forbes Field ATCT will become a part-time facility in the near future with hours published in the North Central Airport/Facility Directory. The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Topeka Forbes Field ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Topeka Forbes Field, Topeka, Kansas. The purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Topeka Forbes Field ATCT. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 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 amended Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "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 will not have a significant 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).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

ACE KS D Topeka, Forbes Field, KS [Revised]

Topeka Forbes Field, KS
(lat. 38°57'01" N, long. 97°39'51" W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.6-mile radius of Forbes Field. This Class D airspace area is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–5266 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ACE–03]

Modification of Class D Airspace; Philip Billard Municipal Airport, Topeka, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the official description of the Class D airspace associated with the Topeka Philip Billard Municipal Airport, Topeka, Kansas, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16, 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect of this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Topeka Philip Billard Municipal Airport Traffic Control Tower (ATCT), Topeka, Kansas.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Topeka Philip Billard Municipal Airport control zone was in effect 24 hours a day, 7 days a week. However, the Topeka Philip Billard ATCT was a part-time facility with the hours published in the North Central Airport/Facility Directory The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Topeka Philip Billard ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Topeka Philip Billard Municipal Airport, Topeka, Kansas. The purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Topeka Philip Billard ATCT. I find that notice and public procedure under 5

U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 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 amended Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) Is not a "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 will not have a significant 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).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

ACE KS D Topeka, Philip Billard Airport, KS [Revised]

Topeka Philip Billard Municipal Airport, KS
(lat. 39°04'08" N, long. 97°37'21" W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4-mile radius of Philip Billard Municipal Airport, excluding that airspace within the Topeka Forbes Field, KS, Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–5267 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket Nos. 91–ANM–14, 91–ANM–16, 19–ANM–17, 93–ANM–1, 93–ANM–2, 93–ANM–3, and 93–ANM–5]

Establishment of Class E Airspace and Alteration of Class D and Class E Airspace Areas, VOR Federal Airways and Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On September 7, 9, and 10, 1993, the Federal Aviation Administration (FAA) published final rules altering the Class D airspace area in Broomfield, CO; altering the Class D airspace and establishing Class E Airspace in Aurora, CO; altering Class D and Class E airspace areas in Englewood, CO; altering the Class E airspace area in Denver, CO; altering VOR Federal airways in Colorado, Nebraska, and Wyoming; and altering jet routes in Colorado, Idaho, Kansas, Nebraska, South Dakota, Utah, and Wyoming. These actions support the new Denver International Airport airspace reconfiguration. In view of the delay in the opening date of the new Denver International Airport, this action delays the rules' effective date until May 15, 1994.

EFFECTIVE DATE: Effective March 8, 1994, the effective date of the final rules at 58 FR 47041, 58 FR 47371, 58 FR 47372, 58 FR 47373, 58 FR 47631, 58 FR 47633, 58 FR 47635, as postponed at 58 FR 60552, and corrected at 59 FR 1472, 59 FR 5080 and 59 FR 6217 is delayed until 0601 UTC, May 15, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION: On September 7, September 9, and September 10, 1993, the Federal Aviation Administration (FAA) published final rules altering and establishing Class D and Class E airspace areas, VOR Federals airways, and jet routes to support the new Denver International Airport airspace reconfiguration. On January 11, 1994, a correction was published on Airspace Docket No. 91–ANM–14 to incorporate a recent amendment to V–220 between Grand Junction, CO, and Meeker, CO. Additionally, on February 3 and 10, 1994, corrections were published on J–54 in Airspace Docket No. 91–ANM–16 to reinstate a segment from Cherokee, WY, to Laramie, WY. The official opening of the Denver International Airport has been delayed until May 15, 1994. Accordingly, the effective date of the related final rules should be postponed to coincide with the opening of the new airport.

Because the public needs to be made aware of this postponement immediately, notice and public procedure are impracticable and good cause exists for making the postponement effective in less than 30 days.

In consideration of the foregoing, effective March 8, 1994, the effective date of Airspace Docket No. 93–ANM–1 modifying the Class D airspace area in Broomfield, CO (58 FR 47041; September 7, 1993); Airspace Docket No. 93–ANM–2 modifying the Class D airspace area and establishing a Class E airspace area in Aurora, CO (58 FR 47371; September 9, 1993); Airspace Docket No. 93–ANM–3 modifying the Class D and Class E airspace areas in Englewood, CO (58 FR 47372; September 9, 1993); Airspace Docket No. 93–ANM–5 modifying the Class E airspace areas at the Denver Centennial Airport, CO, Denver, CO, and Erie, CO (58 47373; September 9, 1993); Airspace Docket No. 91–ANM–14 altering VOR Federal airways in Colorado, Nebraska, and Wyoming (58 FR 47631; September 10, 1993) and the final rule correction (59 FR 1472; January 11, 1994); Airspace Docket No. 91–ANM–16 altering jet routes in Colorado, Idaho, Kansas, Nebraska, South Dakota, Utah, and Wyoming (58 FR 47633; September 10, 1993) and the final rule corrections (59 FR 5080; February 3, 1994) and (59 FR 6217; February 10, 1994); and Airspace Docket No. 91–ANM–17 altering VOR

Federal airways in Colorado and Wyoming (58 FR 47635; September 10, 1993) are delayed from March 9, 1994, to 0601 VTC, May 15, 1994.

Issued in Washington, DC, on March 3, 1994.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–5291 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–AWA–3]

RIN 2120–AE46

Alteration of the Denver Class B Airspace Area; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On September 17, 1993, the Federal Aviation Administration (FAA) published a final rule altering the Denver, CO, Class B airspace area. On January 20, 1994, a correction to the final rule was published to correct certain airport reference point and navigational aid (NAVAID) coordinates for the new airport, and to reflect that the Denver Very High Frequency Omnidirectional Range (VOR) has been upgraded to a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) facility. In view of the delay in the opening date of the new Denver International Airport, this action delays the rule's effective date until May 15, 1994.

EFFECTIVE DATE: March 8, 1994, the effective date of the final rules at 58 FR 48722, as postponed at 58 FR 60552 and corrected at 59 FR 2953 is delayed until 0601 UTC, May 15, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION: On September 17, 1993, the Federal Aviation Administration (FAA) published a final rule altering the Denver, CO, Class B airspace area. Subsequently, on November 17, 1993, a delay of effective date was published and on January 20, 1994, a correction to the final rule was published to correct an error in the coordinates for the airport reference point and the supporting NAVAID for the new Denver International Airport, and to reflect that the Denver VOR has been upgraded to a VOR/DME facility. The official opening of the Denver International Airport has now been delayed until May 15, 1994. Accordingly, the effective date of the alteration and correction of the related Class B airspace area should be postponed to coincide with the opening of the new airport.

Because the public needs to be made aware of this postponement immediately, notice and public procedure are impracticable and good cause exists for making the postponement effective in less than 30 days.

In consideration of the foregoing, effective March 8, 1994, the effective date of the final rule altering the Denver, Co, Class B airspace area (58 FR 48722; September 17, 1993), as delayed by a final rule at 58 FR 60552, November 17, 1993, and the effective date of the final rule correction (59 FR 2953; January 20, 1994) are delayed from March 9, 1994, to 0601 UTC, May 15, 1994.

Issued in Washington, DC, on March 3, 1994.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–5290 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–20]

Alteration of Jet Route J–171; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On January 12, 1994, the Federal Aviation Administration (FAA) published a final rule altering Jet Route J–171 from Tobe, CO, to Hugo, CO. This action accommodated the new Denver International Airport airspace reconfiguration. In view of the delay in the opening date of the new Denver International Airport, this action delays the rule's effective date until May 15, 1994.

EFFECTIVE DATE: Effective March 8, 1994, the effective date of the Final Rule at 59 FR 1619 is delayed until 0601 UTC, May 15, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION: On January 12, 1994, the Federal Aviation Administration (FAA) published a final rule altering Jet Route J–171 from Tobe, CO, to Hugo, CO, to accommodate the new Denver International Airport airspace reconfiguration. The official opening of the Denver International Airport has been delayed until May 15, 1994. Accordingly, the effective date of this jet route alteration should be postponed to coincide with the opening of the new airport.

Because the public needs to be made aware of this postponement immediately, notice and public procedure are impracticable and good cause exists for making the postponement effective in less than 30 days.

In consideration of the foregoing, effective March 8, 1994, the effective date of the final rule altering the Jet Route J–171, (59 FR 1619; January 12, 1994) is delayed from March 9, 1994, to 0601 UTC, May 15, 1994.

Issued in Washington, DC, on March 3, 1994.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–5292 Filed 3–8–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ACE–02]

Modification of Class D Airspace; Salina, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule;

SUMMARY: This action modifies the official description of the Class D airspace associated with the Salina Municipal Airport, Salina, Kansas, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16, 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an

operating control tower is now Class D airspace. The intended effect of this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Salina Airport Traffic Control Tower (ATCT), Salina, Kansas.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Salina control zone was in effect 24 hours a day, 7 days a week. However, the Salina ATCT was a part-time facility with the hours published in the North Central Airport/Facility Directory. The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Salina ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Salina Municipal Airport, Salina, Kansas. The purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Salina ATCT. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 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 amended Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "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 will not have a significant 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).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

ACE KS D Salina, KS [Revised]
Salina Municipal Airport, KS
(lat. 38°47'30" N, long. 97°39'03" W)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.9-mile radius of Salina Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–5268 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–ACE–09]

Modification of Class D Airspace; Joplin, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the official description of the Class D airspace associated with the Joplin Regional Airport, Joplin, Missouri, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16, 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect of this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Joplin Regional Airport Traffic Control Tower (ATCT), Joplin, Missouri.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Joplin control zone was in effect 24 hours a day, 7 days a week. However, the Joplin ATCT was a part-time facility with the hours published in the North Central Airport/Facility Directory. The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Joplin ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Joplin Regional Airport, Joplin, Missouri. The

purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Joplin ATCT. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 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 amended Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "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 will not have a significant 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).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

ACE MO D Joplin, MO [Revised]
Joplin Regional Airport, MO
(lat. 37°09'02" N, long. 94°29'54" W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.2-mile radius of Joplin Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice of Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–5269 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ACE–10]

Modification of Class D Airspace; Springfield, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the official description of the Class D airspace associated with the Springfield Regional Airport, Springfield, Missouri, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16, 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect to this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Springfield Regional Airport Traffic Control Tower (ATCT), Springfield, Missouri.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Springfield control zone was in effect 24 hours a day, 7 days a week. However, the Springfield ATCT was a part-time facility with the hours published in the North Central Airport/Facility Directory. The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Springfield ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Springfield Regional Airport, Springfield, Missouri. The purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Springfield ATCT. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 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 amended Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "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 will not have a significant 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).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

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

Paragraph 5000 General

* * * * *

ACE MO D Springfield, MO [Revised]
Springfield Regional Airport, MO
(lat. 37°14'39" N, long. 93°23'13" W)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.2-mile radius of Springfield Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–5270 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–ACE–06]

Modification of Class D Airspace; Grand Island, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the official description of the Class D airspace associated with the Grand Island, Central Nebraska Regional Airport, Grand Island, Nebraska, by adding the phrase: "This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." On September 16, 1993, Airspace Reclassification discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. The intended effect of this action is to allow a variation of Class D airspace effective times to coincide with the operating hours of the Grand Island, Central Nebraska Regional Airport Traffic Control Tower (ATCT), Grand Island, Nebraska.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Air Traffic Division, System Management Branch, ACE–530b, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

Airspace Reclassification, effective September 16, 1993, has discontinued the use of the terms "control zone" and "airport traffic area." Airspace designated from the surface for an airport where there is an operating control tower is now Class D airspace. Prior to September 16, 1993, the Grand Island control zone was in effect 24 hours a day, 7 days a week. However, the Grand Island ATCT was a part-time facility with the hours published in the North Central Airport/Facility Directory. The intended effect of this action is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Grand Island ATCT.

The Rule

This amendment to part 71 of the Federal Aviation Regulations modifies the Class D airspace at the Grand Island, Central Nebraska Regional Airport, Grand Island, Nebraska. The purpose of this amendment is to allow a variation to the Class D airspace effective times to coincide with the operating hours of the Grand Island ATCT. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas designated as surface areas for airports are published in Paragraph 5000 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 amended Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant 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).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

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

Paragraph 5000 General

* * * * *

ACE NE D Grand Island, NE [Revised]
Grand Island, Central Nebraska Regional Airport, NE
(lat. 40°58'03" N, long. 98°18'31" W)

That airspace extending upward from the surface to and including 4,300 feet MSL within a 4.4-mile radius of Central Nebraska Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dated and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, Missouri, on February 15, 1994.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 94–5271 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 93–ASO–2]

Establishment of Restricted Area R–3008D, and Amendment of Restricted Areas R–3008A, R–3008B, and R–3008C; Grand Bay Weapons Range, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area R–3008D above existing Restricted Areas R–3008A, R–3008B, and R–3008C at the Grand Bay Weapons Range, Moody Air Force Base (AFB), GA. The new restricted area is required to accommodate high altitude/high angle weapons delivery training at the Grand Bay Weapons Range. In addition, the designated controlling agency for Restricted Areas R–3008A, R–3008B, and R–3008C is changed from FAA, Jacksonville ARTCC to U.S. Air Force, Valdosta Approach Control. Further, this action amends the title of the using agency for Restricted Areas R–3008A, R–3008B, and R–3008C to reflect the current organizational name.

EFFECTIVE DATE: 0901 UTC, April 28, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Military Operations Program Office, Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9361.

SUPPLEMENTARY INFORMATION:

History

On August 3, 1993, the FAA proposed to amend part 73 of the Federal Aviation Regulations (14 CFR Part 73) to establish Restricted Area R–3008D above the existing Grand Bay Weapons Range Restricted Areas R–3008A, R–3008B, and R–3008C, located at Moody AFB, GA (58 FR 41214). In addition, the FAA proposed to change the designated controlling agency for the existing Restricted Areas R–3008A, R–3008B, and R–3008C from FAA, Jacksonville ARTCC to Valdosta Approach Control.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The proposed amendment, as published in the notice, incorrectly listed the proposed controlling agency for all four restricted areas as "FAA, Valdosta Approach Control." Valdosta Approach Control is a military-operated air traffic control facility, rather than FAA, and has been delegated controlling agency responsibility for the Grand Bay Weapons Range by the Jacksonville ARTCC. This action corrects the controlling agency title to read "U.S. Air Force, Valdosta Approach Control." Although not described in the notice, this action also amends the title of the using agency for the existing Restricted Areas R–3008A, R–3008B, and R–3008C by deleting the word "Tactical" from the title to reflect the current organizational name. Except for the changes noted above, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Section 73.30 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

The Rule

This amendment to part 73 of the Federal Aviation Regulations establishes Restricted Area R–3008D at the Grand Bay Weapons Range to extend the vertical limits of the range to but not including flight level 230. As a result of experience gained in Operation Desert Storm, the U.S. Air Force determined that it was necessary to expand air-to-surface weapons delivery profiles to include high altitude/high angle deliveries. This action provides the necessary vertical airspace to accommodate these current training requirements. In addition, this action changes the controlling agency for all Grand Bay Weapons Range restricted areas from "FAA, Jacksonville ARTCC" to "U.S. Air Force, Valdosta Approach Control." By letter of agreement between Jacksonville ARTCC and the U.S. Air Force, the FAA has delegated the affected airspace to Valdosta Approach Control. Finally, this action deletes the word "Tactical" from the name of the current using agency for R–3008A, R–3008B, and R–3008C in order to reflect the correct organizational name.

Environmental Review

In accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," this action is not subject to environmental assessments and procedures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "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 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 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.30 [Amended]

2. In each of the designations in § 73.30 listed below, remove the words "FAA, Jacksonville ARTCC" for the controlling agency and insert, in their place, the words "U.S. Air Force, Valdosta Approach Control." Also, in each of the designations listed below amend the title for the using agency by deleting the word "Tactical" to reflect the current organizational name.

R–3008A Grand Bay Weapons Range, GA
R–3008B Grand Bay Weapons Range, GA
R–3008C Grand Bay Weapons Range, GA

3. Add the following designation in § 73.30 to read as follows:

R–3008D Grand Bay Weapons Range, GA [New]

Boundaries. Beginning at lat. 31°04′01″ N., long 83°01′00″ W.; to lat.30°51′01″ N., long 83°01′00″ W.; to lat. 30°51′01″ N., long 83°08′00″ W.; to lat. 30°53′31″ N., long 83°09′00″ W.; to lat. 30°56′51″ N., long 83°10′00″ W.; to lat. 30°57′36″ N., long 83°11′05″ W.; to lat. 30°59′13″ N., long 83°10′00″ W.; to lat. 31°02′01″ N., long 83°09′00″ W.; to lat. 31°04′01″ N., long 83°08′00″ W.; to the point of beginning.

Designated altitudes. 10,000 feet MSL to but not including FL 230.

Time of designation. 0700–1900 local time, Monday–Friday, other times by NOTAM six hours in advance.

Controlling agency. U.S. Air Force, Valdosta Approach Control. Using agency. U.S. Air Force, 347th Fighter Wing, Moody AFB, GA.

Issued in Washington, DC, on February 24, 1994.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–5272 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 117

[CGD08–94–003]

RIN 2115–AE47

Drawbridge Operation Regulations; Humble Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: Notice is hereby given that the Coast Guard has issued a temporary deviation to the regulations governing the opening of a drawbridge over the Humble Canal, from March 7 through May 4, 1994. This deviation requires the Louisiana Department of Transportation and Development (LDOTD) to close the bridge for a continuous 59-day period. The purpose of the closure is to allow LDOTD to stabilize and strengthen the bridge so that the South Terrebonne Parish Tidewater Management & Conservation District will be able to haul dirt and heavy equipment for the construction of a hurricane protection levee south of the bridge.

EFFECTIVE DATES: The period of deviation begins on Monday, March 7, 1994, and continues through Wednesday, May 4, 1994.

FOR FURTHER INFORMATION CONTACT: Rose A. Payne, Bridge Program Manager, Eighth Coast Guard District. Telephone number (504) 589–2965.

SUPPLEMENTARY INFORMATION: The only economic consequences involve the rerouting of navigation presently using Humble Canal. However, an alternate route is available via Bayou Terrebonne and Lake Barre. This deviation is for the purpose of providing a specific time frame to commence construction of a hurricane protection levee for many residents living in the low areas of South Terrebonne Parish.

This deviation from normal operating regulations is authorized in accordance with the provisions of Title 33 of the Code of Federal Regulations, §§ 117.35 and 117.37.

Dated: February 23, 1994.

J.C. Card,

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

[FR Doc. 94–5278 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 05–94–005]

Special Local Regulations for Marine Events; Nations Bank Town Point Air Show; Town Point, Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This document implements special local regulation for the Nations Bank Town Point Air Show. The event will consist of an air show with aerobatics and fly-bys. The regulations are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 become effective according to the dates and times listed below.

Friday: July 15, 1994
Closure: 8:45 pm–9:30 pm
Saturday: July 16, 1994
Closure: 11:30 am–12:15 pm; 1:00 pm–1:45 pm; 2:30 pm–3:15 pm; 4:00 pm–4:45 pm
Sunday: July 17, 1994
Closure: 11:30 am–12:15 pm; 1:00 pm–1:45 pm; 2:30 pm–3:15 pm; 4:00 pm–4:45 pm.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Boulevard, Portsmouth, Virginia 23703–2199 (804) 483–8559.

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT R.B. Birthisel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

The Norfolk Festevents, Ltd. submitted an application to hold the Nations Bank Town Point Air Show. The air show will be held in the Elizabeth River in the Town Point area between the Naval Hospital and Portside. Since many spectator vessels are expected to be in the area to watch the air show, the regulations in 33 CFR 100.501 are being implemented. The waterway will be closed according to the dates and times listed under effective dates. Since the waterway will not be closed for extended periods at a time, commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g).

Dated: February 24, 1994.

W.T. Leland,

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

[FR Doc. 94–5281 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Louisville 94–003]

RIN 2115–AA97

Safety Zone; Ohio River Miles 468.5 to 473.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Ohio River. The regulation is needed to control vessel traffic in the regulated area to prevent potential environmental and safety hazards associated with commercial vessels transporting cargoes regulated under title 46 Code of Federal Regulations subchapters D and O, while transiting downbound at night during high water conditions. The regulation will restrict commercial navigation in the regulated area for the safety of vessel traffic and the protection of life and property along the river.

EFFECTIVE DATES: This regulation is effective on February 24, 1994, at 7 a.m. EST. It will terminate at 6 p.m. EST on March 11, 1994, unless sooner terminated by the Captain of the Port Louisville, Kentucky.

FOR FURTHER INFORMATION CONTACT: LT Phillip Ison, Operations Officer, Captain of the Port, Louisville, Kentucky at (502) 582–5194.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafter of this regulation is LT Phillip Ison, Project Officer, Marine Safety Office, Louisville, Kentucky, and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the high water periods in the Cincinnati, Ohio area are natural events which cannot be predicted with any reasonable accuracy. The Coast Guard deems it to be in the public's best interest to issue a regulation now as the situation presents an immediate hazard to navigation, life, and property.

Background and Purpose

The situation requiring this regulation is high water in the Ohio River in the vicinity of Cincinnati, Ohio. The Ohio River in the Cincinnati area is hazardous to transit under the best of conditions. To transit the area, mariners must navigate through several sweeping turns and seven bridges. When the water level in the Ohio River reaches 45 feet, on the Cincinnati gage, river currents increase and become very unpredictable, making it difficult for downbound vessels to maintain steerageway. During hours of darkness the background lights of the city of Cincinnati hamper mariners' ability to maintain sight of the front of their tow. The regulation is intended to protect the public and the environment, at night during periods of high water from a potential hazard of large downbound tows carrying hazardous material through the regulated area.

Regulatory Evaluation

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 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation as an action required to protect the public and the environment.

List of Subjects in 33 CFR Part 165

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

Temporary Regulation

In consideration of the foregoing, subpart C 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.

2. A temporary § 165.T02–013 is added, to read as follows:

§ 165.T02–013 Safety Zone: Ohio River.

(a) *Location.* The Ohio River between mile 468.5 and mile 473.0 is established as a safety zone.

(b) *Effective dates.* This section becomes effective on February 24, 1994, at 7 a.m. EST. It will terminate at 6 p.m. EST on March 11, 1994, unless sooner terminated by the Captain of the Port Louisville, Kentucky.

(c) *Regulations.* In accordance with the general regulations under § 165.23 of this part, entry into the described zone by all downbound vessels towing cargoes regulated by title 46 Code of Federal Regulations subchapters D and O with a tow length exceeding 600 feet excluding the tow boat is prohibited from one-half hour before sunset to one-half hour after sunrise.

Dated: February 23, 1994, 3 p.m. EST.

W.J. Morani, Jr.,

Commander, Coast Guard, Captain of the Port, Louisville, Kentucky.

[FR Doc. 94–5280 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

RIN 2115–AA97

COTP Corpus Christi, TX 94–006 Safety Zone Regulation; Gulf Intracoastal Waterway, Matagorda Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Gulf Intracoastal Waterway from mile marker 475 to mile marker 455. Shoaling into the center of the channel has occurred between green buoy 97 and green buoy 105. The safety zone is needed to prevent vessels from grounding on the shoal areas near the narrowed channels.

Entry into this zone is restricted to single wide loaded tows, empty tows may transit through the safety zone double wide. All vessels are restricted to one way traffic between green buoy 89 and green buoy 115.

EFFECTIVE DATES: This regulation becomes effective at 12:01 a.m., on February 15, 1994. It terminates at 12:01 a.m., April 15, 1994, or upon completion of dredging by the Army Corps of Engineers, whichever is earliest.

FOR FURTHER INFORMATION CONTACT: ENS S. Montoya at telephone number (512) 888–3195, or at United States Coast Guard Marine Safety Office, P.O. Box 1621, Corpus Christi, Texas, 78403.

SUPPLEMENTARY INFORMATION: Under 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 and delaying its effective date would be contrary to the public interest since immediate action is needed to reduce the risk of vessel groundings and potential pollution incidents.

Drafting Information

The drafters of this regulation are ENS S. Montoya, Chief, Waterways Management Section, and CAPT R. J. Reining, Commanding Officer, U.S. Coast Guard Marine Safety Office, Corpus Christi, Texas, and CDR D. Dickman, Project Counsel, Eighth Coast Guard District, Legal Office, New Orleans.

Discussion of Regulation

The Coast Guard is establishing a safety zone in the Gulf Intracoastal Waterway from mile marker 475 to mile marker 455. Shoaling into the center of the channel has occurred between green buoy 97 and green buoy 105. The safety

zone is needed to prevent vessels from grounding on the shoal areas near the narrowed channels. Entry into this zone is restricted to single wide loaded tows, empty tows may transit through the safety zone double wide. All vessels are restricted to one way traffic between green buoy 89 and green buoy 115.

Regulatory Evaluation

This temporary final rule is not considered a significant regulatory action under Executive Order 12866 and is not significant under the "Department of Transportation regulatory policies and procedures" (44 FR 11034: February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for a short period of time, and the impacts on routine navigation are expected to be minimal.

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 rule under the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2. of Commandant Instruction M16475.1 (series), this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available by contacting Commander (mps), Eighth Coast Guard District, 501 Magazine Street, New Orleans, LA 70130–3396.

This regulation is issued under to 33 U.S.C. 1225 and 1231, as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

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

Regulation: In consideration of the foregoing, subpart C 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; and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.T08–006 is added to read as follows:

§ 165.T08–006 Safety Zone: Gulf Intracoastal Waterway, Matagorda Bay.

(a) *Location.* The following area is a safety zone: A safety zone exists in the Gulf Intracoastal Waterway from mile marker 475 to mile marker 455, including the entire width of the channel.

(b) *Regulations.* (1) The Gulf Intracoastal Waterway between buoys 89 and 115 is restricted to one way traffic. Before transiting between buoys 89 and 115, a vessel must establish radio communications with all other vessels in the area that are restricted to the maintained channel, to establish which vessel will transit through the safety zone. A vessel may not transit between buoys 89 and 115, without prior approval of the Captain of the Port, unless it has an agreement with the other vessels in the area.

(i) No vessel may meet or pass another vessel between buoys 89 and 115.

(ii) Any vessel meeting another vessel, between buoys 89 and 115, that is restricted in its ability to maneuver outside the maintained channel, must either move to outside the maintained channel, if it is able, or back up until it is east or west of the buoys.

(2) Between mile marker 455 and mile marker 475 of the Gulf Intracoastal Waterway:

(i) A tow consisting of any loaded barges may only transit if made up in a single wide configuration.

(ii) A tow consisting of only empty barges may transit if made up of either a single wide or double wide configuration.

(3) Permission to deviate from these regulations may only be obtained from the Captain of the Port, Corpus Christi, Texas. Permission can be obtained by calling the Chief, Waterways Management Section, U.S. Coast Guard Marine Safety Office, Texas, at telephone number (512) 888–3162 or 3195.

(c) *Effective date.* This section becomes effective at 12:01 a.m., on February 14, 1994. It terminates at 12:01 a.m., April 15, 1994, or upon completion of dredging by the Army Corps of Engineers, whichever is earliest.

Dated: February 14, 1994.

Robert J. Reining,

Captain, Coast Guard, Captain of the Port, Corpus Christi, Texas.

[FR Doc. 94–5279 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 963

Rules of Practice in Proceedings Relative to Violations of the Pandering Advertisements Statute

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule makes several technical amendments to reflect organizational changes resulting from the Postal Service's recent restructuring.

EFFECTIVE DATE: March 8, 1994.

FOR FURTHER INFORMATION CONTACT: Donna Aspell (202) 268–5438.

SUPPLEMENTARY INFORMATION: As a result of Postal Service restructuring, Customer Services District Managers have become the successor officials to Field Division General Managers/ Postmasters for, among other things, performing certain administrative functions under the pandering advertisements statute, 39 U.S.C. 3008. One of these functions is issuing violation complaints pursuant to 39 U.S.C. 3008(d). The statute provides for an administrative hearing if duly requested by the person against whom a complaint has been issued. The procedural rules for the conduct of such a hearing are contained in 39 CFR part 963.

Amendment of part 963 is needed to substitute references to the Customer Services District Manager for references to the Field Division General Manager/ Postmaster. An additional amendment also is needed to update the citation to the Postmaster General's delegation of authority, pursuant to which the rules of practice in part 963 are issued by the Judicial Officer.

List of Subjects in 39 CFR Part 963

Administrative practice and procedure, Advertising, Postal service.

Accordingly, the Postal Service adopts amendments to 39 CFR part 963 as specifically set forth below:

PART 963—[AMENDED]

1. The authority citation for part 963 continues to read as follows:

Authority: 39 U.S.C. 204, 401, 3008.

§ 963.1 [Amended]

2. Section 963.1 is amended by removing "224.1(c)(4)" from the parenthetical citation at the end of the section and adding in its place "226.2(e)(1)".

§ 963.2 [Amended]

3. Section 963.2 is amended by adding "Customer Services District

Manager" after removing "Field Division General Manager/Postmaster", and adding "(hereinafter, "Manager")" after removing "(hereinafter, "Postmaster")".

§ 963.3 [Amended]

4. Section 963.3(a) is amended by adding the word "Manager" after removing the word "Postmaster" wherever it appears, and by removing the ZIP Code at the end of the paragraph and adding the new ZIP Code "20260–6100".

5. Section 963.3(c) is amended by adding the word "Manager's" after removing the word "Postmaster's".

Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 94–5242 Filed 3–7–94; 8:45 am]

BILLING CODE 7710–12–M

U.S. ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI14–02–6138; FRL]–4841–8]

Approval and Promulgation of an Emission Statement Program; Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is approving the State Implementation Plan (SIP) revision request submitted by the State of Michigan on November 16, 1992, supplemented October 25, 1993, and February 7, 1994, for the purpose of implementing an emission statement program for stationary sources within the Detroit, Grand Rapids, and Muskegon ozone nonattainment areas. The implementation plan was submitted by the State to satisfy the Clean Air Act (Act) requirements for an emission statement program as part of the SIP for Michigan.

DATES: This action will be effective May 3, 1994 unless notice is received by April 7, 1994 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments on this rulemaking should be addressed to: Carlton Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the requested SIP revision, technical support documents, and public comments received are available at the following address:United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Daniel Meyer, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–9401.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On November 16, 1992, the Michigan Department of Natural Resources (MDNR) submitted to the USEPA rules and reporting forms requiring emission statements (annual emission reports). Michigan's submittal to USEPA comprised Natural Resources Commission Rule 336.202 (Rule 2), Sections 5 and 14a of the 1965 Air Pollution Act 348, and the 1991 Michigan Air Pollution Reporting Forms, Reference Tables, and General Instructions. On September 23, 1993 the USEPA proposed to disapprove the November 16, 1992 submittal in the Federal Register (58 FR 49463–49464). The MDNR amended its reporting forms, and submitted the 1993 Michigan Air Pollution Reporting Forms, Reference Tables, and General Instructions to USEPA on October 25, 1993. In addition, the MDNR provided a summary of its program along with an implementation strategy. The emission statement submittal addresses the emission statement requirements which are found at Section 182(a)(3)(B) of the Act.

Section 182(a)(3)(B) of the Act states that, within 2 years, States in which ozone nonattainment areas classified marginal or worse are located must submit revisions to their SIPs to require the owners or operators of stationary sources of volatile organic compounds (VOC) or oxides of nitrogen (NO_x) to provide States with statements, in a form acceptable to the USEPA, showing actual emissions of NO_x and/or VOC from those sources. The first emission statements must be submitted to the States within 3 years of the enactment of the 1990 Clean Air Act Amendments, by November 15, 1993. Subsequent statements are to be submitted annually thereafter. These statements must contain certifications of accuracy.

Section 182(a)(3)(B)(ii) of the Act specifies that the States may waive the emission statement requirements for any class or category of sources which emit less that 25 tons per year if the States, in their submissions of base year emission inventories or periodic emission inventories (required to be submitted to the USEPA every 3 years), provide for the reporting of the emissions from the exempted source classes or categories and if the reported emissions are determined using emission factors acceptable to the USEPA.

II. Analysis of State Submittal

The criteria used to review the submission are found in USEPA's draft *Guidance on the Implementation of an Emission Statement Program*, July 1992. Four criteria have been established for approvability. One, the State should require sources emitting NO_x or VOC in all ozone nonattainment areas to submit emission statements before November 15, 1993 and annually thereafter. Two, when requesting emission statement data from sources of NO_x or VOC, the State should require: (a) Certification of data accuracy; (b) source identification information; (c) operating schedule; (d) emissions information; (e) control equipment information; and (f) process data. Three, the pollutants being reported (NO_x and VOC) and accompanying terminology should be clearly identified and defined. Four, the State should commit to provide emission statement data and updates to USEPA.

After reviewing Michigan's submission against the above criteria, no deficiencies were found. MDNR requires sources of VOC or NO_x in ozone nonattainment areas to submit emission statement data. The State notifies sources of this requirement in the State's reporting forms. The forms request proper certification of data accuracy along with emission statement data. The emission reporting forms define the applicable terms necessary to complete the forms. The State is committed to submitting emission statement information to USEPA via the Aerometric Information Retrieval System (AIRS) as expeditiously as possible. A detailed analysis of the SIP is found in three technical support documents dated June 3, 1993, September 14, 1993, and November 18, 1993.

III. Implications of Action

Based upon USEPA's evaluation of Michigan's November 16, 1992 and supplemental October 25, 1993 submittal, USEPA is approving the emission statement submission as a revision to the Michigan ozone SIP. Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future

request for revision of any SIP. The USEPA shall consider each request for revision of the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Executive Order (EO) 12291

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989. 54 FR 2214–2225. On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions, 54 FR 2222, from the requirements of section 3 of Executive Order 12291 for a period of 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive ORder 12291 on September 30, 1993.

V. Regulatory Flexibility

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 4, 1994.

David A. Ullrich,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(93) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(93) On November 16, 1992, the Michigan Department of Natural Resources submitted Natural Resources Commission Rule 336.202 (Rule 2), Sections 5 and 14a of the 1965 Air Pollution Act 348, and the 1991 Michigan Air Pollution Reporting Forms, Reference Tables, and General Instructions as the States emission statement program. Natural Resources Commission Rule 336.202 (Rule 2) became effective November 11, 1986. Section 5 and 14a of the 1965 Air Pollution Act 348 became effective July 23, 1965.

(i) Incorporation by reference.

(A) Natural Resources Commission Rule 336.202 (Rule 2) became effective November 11, 1986. Section 5 and 14a of the 1965 Air Pollution Act 348 became effective July 23, 1965.

3. Section 52.1174 is amended by adding paragraph (b) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(b) Approval—On November 16, 1992, the Michigan Department of Natural Resources submitted Natural Resources Commission Rule 336.202 (Rule 2), Sections 5 and 14a of the 1965 Air Pollution Act 348, and the 1991 Michigan Air Pollution Reporting Forms, Reference Tables, and General Instructions as the States emission statement program. Natural Resources Commission Rule 336.202 (Rule 2) became effective November 11, 1986. Section 5 and 14a of the 1965 Air Pollution Act 348 became effective July 23, 1965. These rules have been incorporated by reference at 40 CFR 52.1170(c)(93). On October 25, 1993, the State submitted the 1993 Michigan Air Pollution Reporting Forms, Reference Tables, and General Instructions, along with an implementation strategy for the State's emission statement program.

[FR Doc. 94–5226 Filed 3–7–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 81–059a]

RIN 2115–AB91

Licensing of Officers and Operators for Mobile Offshore Drilling Units

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: In an interim final rule published on April 18, 1990, (55 FR 14792), the Coast Guard amended the regulations concerning the licensing of officers on mobile offshore drilling units (MODUs) and the manning of these vessels. The rulemaking implemented National Transportation Safety Board (NTSB) recommendations for the establishment of personnel qualifications and manning regulations for MODUs. These minimum standards were intended to ensure that licensed individuals on board MODUs are qualified to deal with specific marine safety matters. This rule adopts the interim final rule with minor changes.

EFFECTIVE DATE: This rule is effective on April 7, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Paul W. Eulitt, Project Manager, Office of Marine Safety, Security and Environmental Protection, (G–MVP), phone (202) 267–0224.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Paul W. Eulitt, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On August 8, 1983, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Licensing of Officers and Operators and Registration of Staff Officers" in the Federal Register, (48 FR 35920), proposing to completely revise the licensing regulations in part 10 of title 46 Code of Federal Regulations. Included in the NPRM were proposed rules formalizing the requirements for MODU industry licenses.

As a result of comments received concerning the licensing and manning requirements for MODU's, the Coast Guard published a separate supplemental notice of proposed rulemaking (SNPRM) on October 24, 1985, (50 FR 43366) addressing these issues.

An interim final rule (IFR) was published on October 16, 1987 (52 FR 38660). Comments received in response to this IFR indicated a need to re-address several issues related to MODU licensing and manning. A notice suspending the IFR's effective date was published on February 28, 1989 (54 FR 8334).

A second SNPRM published May 17, 1989 (54 FR 21246), proposed to revise the offshore installation manager qualifications and MODU manning levels. It also proposed a procedure by which unlicensed individuals currently serving in positions requiring licenses could obtain the required credentials.

A second IFR published on April 18, 1990, (55 FR 14792), adopted the second SNPRM with minor changes and permitted the public the opportunity to submit additional comments on this rulemaking. The Coast Guard received 5 letters commenting on the IFR.

A public hearing was not requested and one was not held.

Background and Purpose

Public Law 96–378 (codified as 46 United States Code 7101(d)) requires the establishment, where possible, of suitable career patterns, service and qualifying requirements, and substitution of training time and courses of instruction for sea service on deck or in the engine department. This places responsibilities on the Coast Guard for modifying many sections of our licensing regulations.

The Coast Guard has long recognized the need for special licenses adapted to the unique operations associated with MODUs. In response to a number of major marine casualties on U.S. flag MODUs, investigations were conducted by the NTSB and the Coast Guard marine boards of investigation. These investigations concluded that current Coast Guard regulations did not adequately address the unique characteristics inherent in the offshore oil drilling industry. These investigation reports recommended that the Commandant of the Coast Guard promulgate personnel qualification and manning regulations for MODUs. Therefore, the Coast Guard, with industry assistance proposed regulations enabling personnel serving in the offshore drilling industry to qualify for licenses.

The purpose of this rulemaking is to adopt as final the IFR published in the **Federal Register** (55 FR 14792) on April 18, 1990, entitled "Licensing of Officers and Operators for Mobile Offshore Drilling Units". This rulemaking also makes minor changes adopting recommendations provided in the comments received to the IFR.

Discussion of Comments and Changes

The Coast Guard appreciates the effort expended by the offshore drilling industry and other interested parties in commenting on this rulemaking. As addressed below, several commenters expressed similar opinions on specific issues.

1. Time Limitation for Conversion of Existing MODU Licenses

Two comments indicated that the IFR was unclear as to how long a holder of a license could convert an existing Master or Mate MODU license to either one of three licenses: (1) Offshore Installation Manager (OIM); (2) Barge Supervisor (BS); or (3) Ballast Control Operator (BCO). The holder of an "old" MODU license will continue to be able to convert the "old" MODU license as long as the holder comes forward prior to the end of the one year grace period after the expiration of their existing license (five years from the date of issue) and the holder provides the appropriate required training certificates. Thus, a license can be converted at any time after July 1, 1990, until the license lapses. Once the license has lapsed, an applicant must follow the procedures for re-issuance of a license and comply with the new requirements.

These same two comments also expressed a concern that license holders would not get the word about converting to the "new" MODU license prior to expiration of their "old" license. Comments requested that the Coast Guard notify all MODU license holders by letter of their opportunity to convert their "old" license. The Coast Guard believes that the holder of a license has the responsibility for the timely renewal of a license and believes it would be inefficient for the Coast Guard to attempt to contact and inform all license holders about this rulemaking. However, the Coast Guard intends to publish articles in "Proceedings of the Marine Safety Council" as well as in industry magazines and newsletters addressing changes published in the **Federal Register** on licensing requirements. Also, the Coast Guard will keep the membership of the National Offshore Safety Advisory Committee advised of initiatives effecting the licensing requirements for industry personnel.

2. Stability Courses

Two comments were received regarding the applicant's requirement to complete a training course on MODU stability. One comment requested a waiver of the requirement to complete a stability training course for applicants until July 1, 1995, similar to what had been done with the MODU survival suit/craft training. When this comment was received, the Coast Guard had not yet developed specific guidelines for MODU stability courses. Since publication of the IFR, the Coast Guard developed MODU stability course guidelines and approved numerous MODU stability training courses sufficient to meet the demand of the industry. Therefore, the Coast Guard is retaining the requirement for individuals to complete approved MODU stability training prior to converting or obtaining an original MODU license. The second comment suggested that since specific MODU stability course guidelines had not been developed, the Coast Guard should accept certificates of completion from all presently approved MODU stability courses to satisfy this requirement. The Coast Guard agrees and will accept a certificate from an applicant to meet the licensing requirement for the successful completion of a presently approved MODU stability course.

3. Licensing and Manning Requirements for Tension Leg Platforms (TLPs)

The Coast Guard received a comment which requested that all requirements for licensing and manning of TLPs be suspended until specific TLP requirements could be developed. Essentially, the TLP is a site specific buoyant outer continental shelf facility securely and substantially moored so that it cannot be moved without special effort and not intended for periodic relocation. In contrast, a MODU is a buoyant vessel not site specific and capable of getting underway under its own power without assistance to an alternate site. Even though there are some significant differences between a MODU and a TLP, a TLP still has characteristics of conventional MODUs. Although the TLP is a new and unique offshore facility, the Coast Guard considers it a vessel and believes it inappropriate to altogether suspend licensing and manning requirements for TLPs. Due to the limited number of TLPs presently in operation, the local Officer in Charge of Marine Inspection (OCMI) will continue to consider TLP manning on a case by case basis.

Therefore, an individual assigned on board a TLP will continue to be required to hold an endorsement for TLPs on an existing MODU license until specific sea service and training requirements can be developed.

The Coast Guard will review on a case by case basis the qualifications and training recommendations to determine whether there is a need to require specific license and manning regulations for TLPs. Because of the unit's unique mooring design, a stability training course specific to TLPs or, when in the operating mode, a weight distribution and tendon tension monitoring training may be more appropriate than conventional stability training for a TLP license. However, when a TLP is underway, a licensed individual is required to have completed an appropriate stability training course for the position held.

4. Service Requirement on Self-Propelled Vessels for MODU Engineer Licenses

One comment requested that the Coast Guard delete the self-propelled service requirement on MODUs for engineering licenses. The Coast Guard disagrees and believes that engineers must have propulsion machinery experience to ensure the safety of self-propelled MODUs operating in a marine environment. Therefore, the requirement for a portion of the sea service time for a license as engineer (MODU) will continue to include experience assigned to self-propelled units fitted with propulsion machinery.

The Coast Guard recognizes the difficulty some applicants experience in obtaining the required self-propelled service Therefore, the Coast Guard is adopting a provision in this rule to enable those applicants unable to meet the service requirement for self-propelled units to be issued a license limited to non-self-propelled units.

If an applicant has obtained the total sea service required to qualify for a MODU engineering license without having satisfied that portion of the service required on board self-propelled or propulsion assisted units, then the OCMI may allow those individuals to complete a modified examination and if successfully passed be issued a license limited to non-self-propelled units. Upon presentation of the required self-propelled sea service and completion of any examination deficiencies, the non-self-propelled limitation may be removed.

5. Acceptance of Foreign Training Courses

Three comments were received urging the "acceptance" of foreign training courses. Suggestions recommended that either a joint Coast Guard/industry panel be created as a mechanism for review and acceptance of foreign courses or accept those training programs which have received approval by the foreign coastal state administration where the course is offered. Previously, the Coast Guard has required the industry to demonstrate that a shortage exists of domestically located Coast Guard approved courses and the economic justification is sufficient to allow for approval or acceptance of courses overseas. The Coast Guard has been reluctant to approve courses offered overseas because it has neither the oversight authority or resource capability to conduct an approval program for courses offered worldwide.

Recognizing the introduction of international standards for seafarers and the increased level of U.S. maritime industry activity overseas, the Coast Guard may consider the acceptance of foreign courses similar to domestically approved courses. The Coast Guard will study the appropriateness of accepting or approving foreign training courses when it conducts the next review of the course approval process. Consideration will be given to ensure that sufficient resources are allocated to properly perform the oversight responsibilities of a foreign course acceptance/approval program.

6. Unlimited Master Examination Requirement for OIM Endorsements

One comment requested that the Coast Guard not require the holder of a license as "Master, oceans, any gross tons" to complete additional examination requirements in order to obtain an OIM endorsement. The Coast Guard agrees that the professional competence of an individual who has obtained an unlimited license as master has already been successfully established to the satisfaction of the Coast Guard. Therefore, an unlimited licensed master who possesses the minimum sea service for any of the various OIM endorsements, and completes the required Coast Guard approved courses, is qualified to have the appropriate endorsement added to the license without examination.

7. MODU License Application Evaluation Offices

In order to keep evaluations consistent, the IFR restricted MODU license application approvals to the Coast Guard Regional Examination Center (REC) in New Orleans until July 1, 1992. Although no comments were received regarding MODU license evaluation offices, applications may now be submitted for evaluation and examinations administered at any REC.

Regulatory Evaluation

This rule 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). A full regulatory evaluation was prepared and placed in the rulemaking docket. It may be inspected or copied at the Marine Safety Council (G–LRA–2/36) [CGD 81–059a], Room 3600, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, from 8 a.m. to 3 p.m.

The costs associated with this rulemaking are primarily related to the training of MODU personnel. It requires individuals serving in certain responsible positions aboard MODUs (self-propelled or non-self-propelled) to obtain a Coast Guard issued license or endorsement that authorizes them to serve in those positions. Individuals assigned to these positions on MODUs will have to meet licensing qualifications which include specific length of service experience on board MODUs, completion of training courses, physical standards and a professional examination. The training and qualifications contained in this rule, were strongly recommended by the National Transportation Safety Board and supported by the mobile offshore drilling industry and the international community.

The costs associated with licensing and qualification of the personnel in positions of responsibility on MODUs are relatively insignificant when compared to typical MODU construction costs and operating fees. Implementation of this requirement will not increase manning requirements on MODUs but rather set a standard for training and level of experience for licensed individuals assigned to MODUs. Most drilling companies already require high standards of experience and training for individuals serving aboard their mobile offshore units. Therefore, since this rulemaking does not require any major expenditures by the maritime industry, consumers, Federal, state or local governments, it is not expected to have a significant economic impact.

Small Entities

This rule applies to licenses for individuals only. The effect will formalize the requirements to attend industry-specific training. Such training was optional for individuals serving aboard MODUs. Because this rule is essentially procedural and will permit the drilling companies to operate according to current, long-standing industry practice, the economic impact of this action is expected to be minimal. Therefore, 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 collection of information requirements. Individuals seeking MODU licenses will be required to apply for a license and provide certificates as evidence of having successfully completed the required training. The certificate will be supplied by the training facilities which provide the course(s). The Coast Guard submitted the requirements to the Office of Management and Budget (OMB) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB has approved them. The section numbers are in § 10.107, and §§ 10.470, 10.472, 10.474, 10.542, and 10.544 and the corresponding OMB approval number is OMB Control Number 2115–AB91. The time required to comply with this requirement is inconsequential.

Federalism

The Coast Guard has analyzed this rulemaking under the principles and criteria contained in Executive Order 12612 and has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This final rule adopts a new licensing structure for licensed officers aboard MODUs and provides for safe manning of these vessels. This action was necessary to establish personnel qualifications and manning regulations for this type of vessel particular to the offshore drilling industry. Compliance with these minimum standards will ensure that properly trained and qualified individuals are on board MODUs to perform the daily marine safety related matters. The Coast Guard is preempting any state action addressing this same subject matter.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. The rule is procedural in nature and permits the affected vessels to continue to operate according to current industry practice. Therefore, this rule is included in the categorical exclusion in subsection 2.B.2.1, "Administrative actions or procedural regulations and policies which clearly do not have any environmental impact." A Categorical Exclusion Determination has been placed in the docket.

List of Subjects in 46 CFR Part 10 and Part 15

Marine safety, Navigation (water), Reporting and record keeping requirements, Seamen, Vessels and mobile offshore drilling units.

In consideration of the foregoing, the interim rule amending 46 CFR parts 10 & 15 which was published at 55 FR 14792 on April 18, 1990, is adopted as a final rule with the following changes.

1. Section 10.542 is amended by adding paragraph (c) to read as follows:

§ 10.542 License for chief engineer (MODU).

* * * * *

(c) If an applicant successfully completes a modified examination and possesses the total required sea service for a license as chief engineer (MODU), but does not possess the required sea service on board self-propelled or propulsion assisted units, the OCMI may issue the applicant a license limited to non-self-propelled units. The OCMI may remove the limitation upon presentation of satisfactory evidence of the required self-propelled sea service and completion of any additional required examination.

2. Section 10.544 is amended by adding paragraph (c) to read as follows:

§ 10.544 License for assistant engineer (MODU).

* * * * *

(c) If an applicant successfully completes a modified examination and possesses the total required sea service for a license as an assistant engineer (MODU), but does not possess the required sea service on board self-propelled or propulsion assisted units, the OCMI may issue the applicant a license limited to non-self-propelled units. The OCMI may remove the limitation upon presentation of the satisfactory evidence of the required self-propelled sea service and completion of any additional required examination.

3. Section 10.903 is amended by redesignating existing paragraphs (b)(1) through (b)(3) as (b)(2) through (b)(4) respectively and by adding a new paragraph (b)(1) to read as follows:

§ 10.903 Licenses requiring examinations.

* * * * *

(b) * * * (1) Master ocean any gross tons when adding an endorsement as Offshore Installation Manager.

* * * * *

Dated: March 1, 1994.

A.E. Henn,

Rear Admiral, Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–5277 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

49 CFR Part 543

[Docket No. 93–46; Notice 2]

RIN 2127–AE66

Motor Vehicle Theft Prevention; Exemption From Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the agency regulation on exempting high theft motor vehicle lines from parts marking by limiting the number of high theft lines that may be exempted. For each model year through model year 1996, a manufacturer may petition for exemptions for up to two additional lines of its passenger motor vehicles. For the four year period that begins with model year 1997 and ends with model year 2000, a manufacturer may petition for an exemption for one additional line of its passenger motor vehicles for each year. This final rule conforms the regulation to amendments made by the "Anti Car Theft Act of 1992" to Title VI ("Theft Prevention") of the Motor Vehicle Information and Cost Savings Act.

DATES: *Effective date:* This rule is effective on April 7, 1994.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than April 7, 1994.

ADDRESSES: Petitions for reconsideration of this rule should refer to the docket number and notice number cited in the heading of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION:

Background

1. Motor Vehicle Theft Law Enforcement Act of 1984

The Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98–547) (Theft Act), added title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Pursuant to title VI, NHTSA promulgated 49 CFR part 541, titled "Federal Motor Vehicle Theft Prevention Standard" (Theft Prevention Standard). Part 541 establishes performance requirements for inscribing or affixing vehicle identification numbers onto certain major original equipment and replacement parts of high theft lines of passenger motor vehicles.

Section 605 of title VI permits manufacturers to petition NHTSA to exempt high theft vehicle lines from the Theft Prevention Standard. To be exempted, a high theft line must satisfy two conditions. First, a line must be equipped with an antitheft device as standard equipment on the entire line for which its manufacturer seeks an exemption. Second, NHTSA must determine that such antitheft device is likely to be as effective as parts marking in reducing and deterring motor vehicle theft. As originally enacted, section 605 allowed the agency to grant an exemption for not more than two lines of any manufacturer for the initial model year (model year 1987) to which the vehicle theft prevention standard applies, and two additional lines of any manufacturer for each subsequent model year.

Regulations governing the granting of exemptions are set forth in 49 CFR part 543, "Exemption from Vehicle Theft Prevention Standard." Part 543 sets out procedures for manufacturers to follow in preparing and submitting petitions for exemption from the parts marking requirements of part 541. It also sets forth procedures for NHTSA to follow in processing those petitions and determining whether they should be granted.

2. Anti Car Theft Act of 1992

The "Anti Car Theft Act of 1992" (ACTA), which became law on October 25, 1992, amended title VI of the Cost Savings Act. Title VI was amended to redefine "passenger motor vehicle" to include "any multipurpose passenger vehicle and light-duty truck that is rated at 6,000 pounds gross vehicle weight or less." (See section 601(1) of title VI.) Before the amendment of title VI, "passenger motor vehicle" was defined to include passenger cars only.

The redefinition means that certain light-duty truck lines and multipurpose passenger vehicle lines may now be determined to be likely high theft vehicles, and thus, may be subject to the parts marking requirements of the Theft Prevention Standard. If the lines are designated as high theft lines, manufacturers of certain light-duty trucks and multipurpose passenger vehicle lines may, under the procedures in part 543, petition for exemption of these lines from the parts marking requirements.

The title VI amendment giving rise to this final rule restricts the number of exemptions from parts marking that may be granted to any manufacturer of high theft passenger motor vehicle lines. As a result of the amendments to section 605(a)(2) of title VI, the agency may continue to grant exemptions for two high theft lines per manufacturer per year, from the present through MY 1996. However, for the next four years, title VI states that:

> For MY 1997 through MY 2000, (NHTSA) may grant such an exemption for not more than 1 additional line of any manufacturer
> * * *

Amended title VI also states that, after MY 2000, the granting of any further exemptions would be contingent on a determination by the U.S. Attorney General on whether the antitheft devices are an effective substitute for parts marking in substantially inhibiting vehicle theft. The Attorney General's determination must be made by December 1999. See section 602(f)(5) of title VI.

Notice of Proposed Rulemaking

On July 1, 1993, NHTSA published in the **Federal Register** (58 FR 35422) a notice of proposed rulemaking (NPRM) to make part 543 consistent with the new statutory restrictions on the number of exemptions from the parts marking requirements of part 541. The agency proposed to amend part 543 to state the number of vehicle lines for which a manufacturer may petition for exemption for each model year through MY 2000.

More specifically, NHTSA proposed that for each model year through model year 1996, a manufacturer may petition for exemptions for up to two additional lines of its passenger motor vehicles, and that for each model year from model year 1997 through model year 2000, a manufacturer may petition for exemptions for only one additional line of its passenger motor vehicles. NHTSA noted that the statutory language is more ambiguous about the number of exemptions that may be granted for model years 1997 through 2000 than for the years preceding that period. For guidance in resolving this ambiguity, the agency consulted the legislative history of the ACTA. The agency viewed the legislative history as "strong evidence" that Congress intended to permit each manufacturer to petition NHTSA to grant an exemption for only one additional line of its passenger motor vehicles from parts marking for each of model years 1997 through 2000.

NHTSA did not propose to address exemptions for model years after MY 2000, since any such exemptions are contingent upon the Attorney General's determination to be made in 1999.

Finally, NHTSA proposed a minor amendment to reflect the fact that petitions can be submitted under part 543 for light-duty trucks and multipurpose passenger vehicles, as well as passenger cars.

Public Comments and Final Rule

In response to the NPRM, NHTSA received three comments. The comments were submitted by the American Automobile Manufacturers Association, (AAMA), the Ford Motor Company (Ford), and Chrysler Corporation (Chrysler). AAMA and Ford each commented that they believe the proposed changes to Part 543 conform to the Congressional intent of the ACTA.

In its comment, Chrysler did not recommend any changes in the proposed regulatory text, but made several observations. First, that company noted that it offers antitheft devices as standard equipment on two of its low theft lines and that, under the ACTA, those two lines must have their low theft status reviewed by NHTSA. Chrysler stated that if these lines were to be determined to be high theft, it could lose a year's allocation of exemptions from the parts marking requirements. The agency notes that Chrysler's understanding is correct, and that the result is a logical consequence of the combination of the statutory mandate to review the low theft status of existing lines and the statutory limitation on the number of additional exemptions.

Second, Chrysler stated that it agrees with NHTSA that since the ACTA now includes within its scope certain multipurpose passenger vehicles and light duty trucks, these vehicles should also be eligible for exemption from parts marking.

Third, Chrysler stated that it questions the rationale for limiting parts marking exemptions. That company noted that in order to be exempted from parts marking, an antitheft device must be determined to be at least as effective as parts marking in deterring auto theft. Chrysler stated that it would seem that the ACTA should promote and encourage the inclusion of anti-theft devices as standard equipment on as many vehicle lines as possible in lieu of parts marking. That company argued that the ACTA's exemption limitation may have the practical and real effect of discouraging manufacturers from including antitheft devices as standard equipment on a wider array of vehicle lines. Chrysler stated that the ACTA should have increased the number of annual exemptions allowed and thereby encourage a broader base of vehicles equipped with effective antitheft devices offered as standard equipment.

NHTSA notes that nothing in the ACTA prevents manufacturers from including antitheft devices as standard equipment on all of their vehicles. The statutory limitation on number of exemptions means only that, in some cases, parts marking could be required even if a high-theft line is equipped with an effective antitheft device. While NHTSA understands that Chrysler disagrees with the ACTA's limitation on the number of additional exemptions, the agency must follow the statute as enacted by Congress.

Based on the information set forth above, and in light of the fact that none of the public commenters recommended changes in the proposed regulation, NHTSA is adopting as final the regulatory text proposed in the NPRM.

Regulatory Impacts

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This action has been determined not to be "significant" other either. This rule simply sets forth amendments conforming part 543 to the amendments to title VI. The rule itself has no impacts on the manufacturers of passenger motor vehicles. The agency has also determined that the economic and other impacts of this rule are so minimal that a full regulatory evaluation is not required.

2. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. I certify that this final rule will not have a significant economic impact on a substantial number of small entities. As already noted, this rule simply sets forth amendments conforming part 543 to the amendments to title VI. The rule itself will have no impacts on the manufacturers of passenger motor vehicles or on small organizations or governmental units that purchase passenger motor vehicles. Accordingly, the agency has not prepared a regulatory flexibility analysis.

3. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule and determined that it will not have a significant impact on the quality of the human environment.

4. Paperwork Reduction Act

The procedures in this rule for manufacturers to submit petitions for exemption from parts marking to NHTSA are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The information collection requirements for part 543 have been submitted to and approved by the OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information has been assigned OMB Control No. 2127–0542 ("Petitions for exemption from the vehicle theft prevention standard") and has been approved for use through July 31, 1995.

5. 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

6. Civil Justice Reform

This final rule does not have any retroactive effect, and it does not preempt any State law. Section 613 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2020), provides that judicial review of this rule may be obtained pursuant to section 504 of the Cost Savings Act, (15 U.S.C. 2004). The Cost Savings Act does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 543

Administrative practice and procedure, National Highway Traffic Safety Administration, Reporting requirements.

In consideration of the foregoing, 49 CFR part 543 is amended to read as follows:

PART 543—[AMENDED]

1. The authority citation for part 543 continues to read as follows:

Authority: 15 U.S.C. 2025; delegation of authority at 49 CFR 1.50.

2. Section 543.5(a) is revised to read as follows:

§ 543.5 Petition: General requirements.

(a) For each model year through model year 1996, a manufacturer may petition NHTSA to grant exemptions for up to two additional lines of its passenger motor vehicles from the requirements of part 541 of this chapter. For each of model years 1997 through 2000, a manufacturer may petition NHTSA to grant an exemption for one additional line of its passenger motor vehicles from the requirements of part 541 of this chapter.

* * * * *

3. Section 543.6(a) introductory text is republished for the convenience of the reader and paragraph (a)(1) is revised to read as follows:

§ 543.6 Petition: Specific content requirements.

(a) Each petition for exemption filed under this part must include:

(1) A statement that an antitheft device will be installed as standard equipment on all vehicles in the line for which an exemption is sought;

* * * * *

Issued on: March 2, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–5188 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 59, No. 45
Tuesday, March 8, 1994

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 39

[Docket No. 94–NM–03–AD]

Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 and 767 series airplanes. This proposal would require modification of the latch hook installation for the number two cockpit window frame. This proposal is prompted by reports of the flight crew executing rejected takeoffs (RTO) and air turnbacks (ATB) due to false "closed" indications for the number two cockpit window. The actions specified by the proposed AD are intended to prevent unlatched (not completely closed) number two cockpit windows and the resultant execution of RTO's and ATB's by the flight crew.

DATES: Comments must be received by May 2, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–03–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Roy Boffo, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2780; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–03–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–03–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056

Discussion

Recently, the FAA has received several reports from an operator of Boeing Model 757–200 series airplanes that the flight crew executed rejected takeoffs (RTO) due to the number two cockpit window failing to close completely. In two of these incidents, the RTO's were initiated at 120 knots. As a result, this operator developed special procedures to ensure that these windows were latched prior to each flight. However, these procedures proved to be ineffective, as evidenced by the subsequent execution of four additional RTO's.

Further, several operators of Boeing Model 767 series airplanes recently reported that the flight crew executed air turnbacks (ATB) due to false "closed" indications for the number two cockpit window. Although the latch indicator showed "closed," the number two cockpit window was not completely latched, which resulted in noise in the cockpit.

Investigation into the cause of these unlatched windows revealed that, although the latch handle, which operates a flexible cable that moves four latch cams on the upper, lower, and aft edges of the window frame, may be moved to the "latched" (closed) position, the latch cams may not fully engage the latch posts.

The latch handles must be in the "unlatched" (opened) position to permit the window to travel to the fully closed position. By rotating the latch handle 180 degrees to the "latched" position, the latch cams on the window frame should engage the latch stud on the body of the window frame to prevent the window from opening and to lock the window closed. If the windows do not close completely, cabin pressurization and speed limits will be adversely affected during RTO's and ATB's.

This condition, if not corrected, could result in the flight crew executing RTO's and ATB's due to unlatched (not completely closed) number two cockpit windows.

The FAA has reviewed and approved Boeing Service Bulletin 757–56–0007, dated May 6, 1993 (for Model 757 series airplanes), and Boeing Service Bulletin 767–56–002, dated August 30, 1985, as amended by Notice of Status Change (NSC) Number 767–56–0002 NSC 1, dated July 3, 1986 (for Model 767 series airplanes), that describe procedures for modification of the latch hook installation for the number two cockpit window frame. This modification entails adding a cam latch hook to the window frame; removing a bolt and nut from the window post; and installing a

bolt, spacer, and nut on the window post to strike and move the latch hook away from the latch cam when the window is closed. (The number two cockpit window on the Model 757 and 767 series airplanes are similar in design.)

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the latch hook installation for the number two cockpit window frame. The actions would be required to be accomplished in accordance with the applicable service bulletin and NSC described previously.

There are approximately 640 Model 757 and 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 409 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $2,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $997,960, or $2,440 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 94–NM–03–AD.

Applicability: Model 757 series airplanes having line positions 1 through 534 inclusive, and Model 767 series airplanes having line positions 1 through 114 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent unlatched (not completely closed) number two cockpit windows and the resultant execution of rejected takeoffs and air turnbacks by the flight crew, accomplish the following: (a) Within 18 months after the effective date of this AD, modify the latch hook installation for the number two cockpit window frame in accordance with Boeing Service Bulletin 757–56–0007, dated May 6, 1993 (for Model 757 series airplanes); or Boeing Service Bulletin 767–56–0002, dated August 30, 1985, as amended by Notice of Status Change Number 767–56–0002 NSC 1, dated July 3, 1986 (for Model 767 series airplanes); as applicable.

(b) 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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

Issued in Renton, Washington, on March 2, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–5241 Filed 03–07–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 92–ASW–35]

Proposed Establishment of Class E Airspace: Osceola, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Osceloa, AR. The development of a new Nondirectional Radio Beacon (NDB) Runway (RWY) 19 standard instrument approach procedure (SIAP) utilizing the Osceola NDB has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E Airspace for aircraft executing the NDB RWY 19 SIAP at Osceola, AR.

DATES: Comments must be received on or before April 11, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 92–ASW–35, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Southwest Region, Air Traffic Division, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Gregory L. Juro, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530; telephone: 817–222–5591.

SUPPLEMENTARY INFORMATION:

Comments Invited

Intersted 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 under the caption "addresses". Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 92–ASW–35." The postcard will be date and 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 the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) be submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace extending upward from 700 feet AGL, located at Osceola, AR. The development of a new NDB RWY 19 SIAP utilizing the Osceola NDB has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E Airspace for aircraft executing the NDB RWY 19 SIAP at Osceola, AR.

The coordinates for this airspace docket are based on North American Datum 83. Class E Airspace areas 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 that needs frequent and routine amendments 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 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 the 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

* * * * *

ASW AR E2 Osceola, AR [New]

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Osceola Municipal Airport and within 2.5 miles each side of the 014° bearing from the Osceola RBN extending from the 6.4-mile radius to 7.0 miles north of the airport.

* * * * *

Issued in Fort Worth, TX on February 15, 1994.

Larry D. Gray,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–5273 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Statement of Policy or Interpretation; Proposed Enforcement Policy for Art Materials

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed statement of enforcement policy.

SUMMARY: In 1988, Congress enacted the Labeling of Hazardous Art Materials Act which mandated a labeling standard and certain other requirements for art materials. Based on its experience enforcing these requirements, the Commission is proposing a statement of enforcement policy to more clearly apprise the public of its intended enforcement focus.

DATES: Comments on the proposal should be submitted not later than May 9, 1994.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 502, 4330 East West Highway, Bethesda, Maryland, telephone (301) 504–0800.

FOR FURTHER INFORMATION CONTACT: Mary Toro, Division of Regulatory Management, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400.

SUPPLEMENTARY INFORMATION:

A. Background

In 1988 Congress amended the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1277, when it enacted the Labeling of Hazardous Art Materials Act ("LHAMA"), 15 U.S.C. 1277, concerning the labeling of art materials to warn of potential chronic hazards. LHAMA mandated a voluntary standard, ASTM D 4236, with certain modifications, as a mandatory Commission rule under section 3(b) of the FHSA.

On October 9, 1992, the Commission issued a notice in the **Federal Register**

that codified the standard as mandated by Congress. 57 FR 46626. (At that time, the Commission also issued guidelines for determining when a product presents a chronic hazard and a supplemental regulatory definition of the term "toxic" that explicitly included chronic toxicity.) The standard is codified at 16 CFR 1500.14(b)(8).

LHAMA and the standard it mandated provide certain requirements for art materials. Under these requirements, the producer or repackager of an art material must submit the product's formulation to a toxicologist who will review the formulation to determine if the art material has potential to produce chronic adverse health effects through customary or reasonably foreseeable use. If the toxicologist does determine that the art material has this potential, the toxicologist will recommend appropriate hazard labeling, and the producer or repackager must use suitable labeling on the product. The producer or manufacturer of the art material must submit to the Commission the criteria the toxicologist uses to determine whether the producer/repackager's product presents a chronic hazard and a list of art materials that require chronic hazard labeling. If no chronic hazard labeling is needed, a conformance statement indicating that the product has been reviewed in accordance with the standard as required must appear on or with the product. The standard, which is set forth at 16 CFR 1500.14(b)(8), and section 2(p) of the FHSA, 15 U.S.C. 1261(p), provide further information on the content of appropriate labels and the conformance statement.

B. The Scope of "Art Materials"

These requirements apply to "art materials" as broadly defined in LHAMA. Excluding pesticides, drugs, devices, and cosmetics subject to other federal statutes, the term art material means "any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium." 15 U.S.C. 1277(b)(1). The definition applies to art materials intended for users of any age. *Id.* 1277(b)(2).

When the Commission issued the final rule implementing the LHAMA provisions on October 9, 1992, it recognized that the statutory definition of art material could be interpreted to reach far beyond the common perception of the meaning of that term. Accordingly, the Commission identified three categories of products that could be art materials under this statutory definition. The Commission stated in that notice that it would not enforce the requirements against tools, implements, and furniture that were used in the process of creating a work of art but do not become part of the work of art (called "category 3 products" in the October 9, 1992 notice). Examples of stated items that might fall into this category were drafting tables and chairs, easels, picture frames, canvas stretchers, potter's wheels, hammers, chisels, and air pumps for air brushes.

The Commission also delineated two general categories of products which could fall within the statutory definition and against which the Commission would enforce the LHAMA requirements. These were products which actually become a component of the work of art (e.g., paint, canvas, inks) (previously "category 1 products") and products closely and intimately associated with the creation of an art work (e.g., brush cleaners, solvents, photo developing chemicals) (previously "category 2 products").

These distinctions have been unsatisfactory in the practical enforcement of the LHAMA requirements. These categories, and enforcement policies based on the categories, may lead to determinations that are inconsistent. Thus, the Commission is reconsidering its enforcement of the LHAMA requirements against certain products. This interpretation would supersede the enforcement policy stated in the October 9, 1992 notice and other related interpretations.

To concentrate on art materials that are more likely to present a risk of chronic health effects, the Commission will focus its enforcement on items that have traditionally been considered art materials, such as paints, inks, solvents, pastes, ceramic glazes, and crayons and that may present a risk of chronic injury. This enforcement policy will not compromise public safety because there is virtually no risk of chronic health effects with the types of products and materials that the Commission will not enforce against. Also, even if such products presented such a risk, the Federal Hazardous Substances Act, 15 U.S.C. 1261(p), requires cautionary labeling for any article intended or packaged for household use if it contains a hazardous substance. This includes, but is not limited to, art materials that, under reasonably foreseeable conditions of purchase, storage, or use, may be used in or around the household. Unless expressly exempted, children's articles are banned under the FHSA if they are or contain a hazardous substance. The Commission believes that the public interest will be better served by this exercise of enforcement discretion because the staff can use its resources to pursue enforcement actions against those art materials that present the greatest risk.

The Commission will not enforce against the following types of products.

(1) The Commission will not take enforcement action against general use products which might incidentally be used to create art, unless a particular product is specifically packaged, promoted, or marketed in a manner that would lead a reasonable person to conclude that it is intended for use as an art material. Examples of such general use products are common wood pencils, pens, markers, and chalk. For enforcement purposes, the Commission presumes that these types of items are not art materials. The presumption can be overcome, however, by evidence that such an item is intended for specific use in creating art. Factors the Commission will consider to determine the status of such items include how the items are packaged (e.g., packages of multiple colored pencils, chalks, or markers unless promoted for non-art material uses are likely to be art materials), how they are marketed and promoted (e.g., pencils and pens intended specifically for sketching and drawing are likely to be art materials), and where they are sold (e.g., products sold in an art supply store are likely to be art materials).

(2) The Commission will not take enforcement action against tools, implements, and furniture used in the creation of a work of art such as brushes, chisels, easels, picture frames, drafting tables and chairs, canvas stretchers, potter's wheels, hammers, and air pumps for air brushes. In this policy statement the Commission expands the scope of what were referred to as "category 3" art materials in the October 9, 1992 notice. Based on the Commission's enforcement experience, the Commission will consider some items that it previously categorized as closely and intimately associated with creation of a work of art (previously "category 2" products) to be tools, implements and furniture. The Commission believes that these items (brushes, kilns, and molds) are better characterized as tools and implements against which the Commission will not enforce the LHAMA requirements. The Commission believes this revised interpretation is more consistent with the purposes of LHAMA.

(3) The Commission will not take enforcement action against the surface materials to which an art material is applied. Examples are coloring books and canvas. In many instances, an art material is applied to a surface such as

paper, plastic, wood, or cloth. These surfaces continue to be components of the work of art and thus art materials, but are now characterized as products against which the Commission will not enforce the LHAMA requirements.

(4) The Commission will also refrain from taking enforcement action against the following specifically enumerated materials: paper, cloth, plastic, film, yarn, threads, rubber, sand, wood, stone, tile, masonry, and metal. Several of these materials are often used as a surface for art work while others are used to create the work of art itself. Regardless of use, the Commission will not enforce the LHAMA requirements against them.

The guidance given in (3) and (4) above does not apply if the processing or handling of a material exposes users to chemicals in or on the material in a manner which makes those chemicals susceptible to being ingested, absorbed through the skin, or inhaled. For example, paper stickers marketed or promoted as art materials often have an adhesive backing that users lick. The act of licking the backing can result in the ingestion of chemicals, and LHAMA requirements should be complied with. For self-adhesive stickers, on the other hand, which present little risk of exposure, the staff will generally refrain from enforcement unless there is reason to believe that the nature of a particular sticker and its intended use presents a genuine risk of exposure to a potential chemical hazard either by ingestion or absorption. Another example involves plastic. If the artistic use for which the plastic is intended requires heating or melting it in a manner that results in the emission of chemical vapors, LHAMA requirements apply.

C. Craft and Hobby Kits and Supplies

1. Kits

In enforcing LHAMA, the Commission has encountered the question of the applicability of LHAMA requirements to certain craft or hobby kits. The basic issue centers on the meaning of the term "work of art". In previous letters to industry the staff has advised that the determination depends on whether the end product produced from the kit would be primarily functional or aesthetic. If the former were true, the staff has said that the end product would not be a work of art and none of the components would be art materials. If the latter were true, the end product would be a work of art and all of the components of the kit would be art materials. This distinction proved difficult for practical enforcement, and has resulted in some inconsistent enforcement results. For example, if paints that were included in a kit to make a working model airplane were also included in a paint-by-number set, under the staff's previous interpretation, the Commission would enforce the LHAMA requirements against the paints in the second kit, but not in the first, even though they are the same paints.

The Commission has considered this anomaly, as well as the purpose of LHAMA to alert consumers to the potential dangers associated with products used in the creation of art. As explained below, the Commission believes that its LHAMA enforcement should include both (1) kits to make items for display and (2) kits which involve decorating an item, regardless of the end use of the item created. Models and similar kits to make hobby or art/craft items can have dual purposes, both functional and for display. In addition, when a consumer creatively decorates a functional object, it arguably becomes a work of art just as decorated canvas or paper would be. Therefore, the Commission believes that materials for decorating and assembling models and art/craft items come within the reach of LHAMA. The Commission believes that the following interpretation is more workable than the previous one and is consistent with the intent of Congress.

For kits that include materials to decorate products whether the products are functional, for display, or both, the Commission will enforce the LHAMA requirements against materials in the kit that are intended to decorate or assemble an item in the kit, i.e., traditional art materials, such as, paints, crayons, colored pencils, adhesives, and putties even if the finished product is a toy or other item whose primary use may be functional. Thus, for a kit that contains a plastic toy or a paint-by-number board, and paints to decorate the toy or board itself, or adhesives to assemble the toy, the Commission will expect the paints and adhesives in both cases to meet all the LHAMA requirements, but would not enforce the requirements against the plastic toy or the board, even though the toy or board may technically be classified as an art material.

For kits that package an item that would be subject to enforcement under this policy together with an item that would not, any necessary chronic hazard statements or labeling, including any required conformance statement, must appear on the outer container or wrapping of the kit and must specify the item to which the statement or labeling refers. Any conformance statement must be visible at the point of sale. Any required chronic hazard warning label must be on the immediate package of the item that is subject to LHAMA as well as on accompanying literature where there are instructions for use. See 16 CFR 1500.125. When packaged within a point of sale package, i.e. a kit, which obscures the warning statement, the point-of-sale package must bear the label statement specified in 16 CFR 1500.14(b)(8)(i)(E)(9)(ii).

2. Separate Supplies

The Commission will enforce LHAMA requirements against materials intended to decorate art and craft, model and hobby items, such as paints, even if they are sold separately and not part of a kit. Similarly, paints or markers intended for decorating clothes will be considered art materials for enforcement purposes since they are intended for decorating clothing, even though the resulting item, the garment, has a functional purpose. Note that as explained in section B above, the Commission would not enforce the requirements against the surface upon which the art material is applied, regardless of the primary use of the finished product.

The status of glues, adhesives, and putties will depend on their intended use. Some illustrative examples follow. Glues which are marketed for general repair use only would not be art materials, and the Commission will not enforce the LHAMA requirements against them. Glue sticks for glue guns which are for art or craft use would be considered art materials. Spray adhesives and rubber cements will normally be considered art materials unless they are marketed for some specialty non-art use. School pastes and glues will also be considered art materials.

D. Environmental Considerations

The Commission has considered whether issuance of this proposed enforcement statement will produce any environmental effects and has determined that it will not. The Commission's regulations at 16 CFR 1021.5(c)(1) state that rules and safety standards ordinarily have little or no potential to affect the human environment, and therefore, do not require an environmental impact statement or environmental assessment. The Commission believes that, as with such standards, this proposed enforcement policy would have no adverse impact on the environment.

E. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act generally requires agencies to prepare

proposed and final regulatory analyses describing the impact of a rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Commission believes that this proposed enforcement statement will have little effect on businesses in general or on small businesses in particular. Accordingly, the Commission preliminarily concludes that its enforcement statement concerning the labeling of hazardous art materials would not have any significant economic effect on a substantial number of small entities.

F. Authority

Section 10 of the FHSA gives the Commission authority to issue regulations for the efficient enforcement of the FHSA. 15 U.S.C. 1269(a). This provision authorizes the Commission to issue statements of enforcement policy in which the Commission explains how it intends to enforce a Commission requirement.

G. Effective Date

Since this notice proposes an interpretative rule/statement of enforcement policy, no particular effective date is required by the Administrative Procedure Act. 5 U.S.C. 553(d)(2). The Commission recognizes, however, that as to items against which the Commission previously stated that it would not enforce LHAMA, manufacturers will need time to bring their products into compliance. Any final policy regarding such items would apply to products manufactured or imported an appropriate period, such as six months, or more after publication in the **Federal Register**. The Commission believes that this is adequate time to submit formulae to toxicologists and comply with relevant labeling requirements. As to those items where this policy relieves a restriction, the effective date would be immediate.

List of Subjects in 16 CFR Part 1500

Arts and crafts, Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Toys.

For the reasons given above, the Commission proposes to amend 16 CFR 1500.14 as follows:

PART 1500—[AMENDED]

1. The authority citation for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1277.

2. Section 1500.14(b)(8) is amended by adding a new paragraph (b)(8)(iv) to read as follows:

§ 1500.14 Products requiring special labeling under section 3(b) of the Act.

* * * * *

(b) * * *

(8) * * *

(iv) Policies and Interpretations.

(A) For purposes of enforcement policy, the Commission will not consider as sufficient grounds for bringing an enforcement action the failure of the following types of products to meet the requirements of § 1500.14(b)(8)(i) through (iii).

(*1*) Products whose intended general use is not to create art (e.g., common wood pencils, and single colored pens, markers, and chalk), unless the particular product is specifically packaged, promoted, or marketed in a manner that would lead a reasonable person to conclude that it is intended for use as an art material. Factors the Commission would consider in making this determination are how an item is packaged (e.g., packages of multiple colored pencils, chalks, or markers unless promoted for non-art materials uses are likely to be art materials), how it is marketed and promoted (e.g., pencils and pens intended specifically for sketching and drawing are likely to be art materials), and where it is sold (e.g., products sold in an art supply store are likely to be art materials).

(*2*) Tools, implements, and furniture used in the creation of a work of art such as brushes, chisels, easels, picture frames, drafting tables and chairs, canvas stretchers, potter's wheels, hammers, air pumps for air brushes, kilns, and molds.

(*3*) Surface materials to which an art material is applied, such as coloring books and canvas, unless, as a result of processing or handling, the consumer is likely to be exposed to a chemical in or on the surface material in a manner which makes that chemical susceptible to being ingested, absorbed, or inhaled.

(*4*) The following materials, whether used as a surface or applied to one, unless, as a result of processing or handling, the consumer is likely to be exposed to a chemical in or on the material in a manner that makes that chemical susceptible to being ingested, absorbed, or inhaled: paper, cloth, plastics, films, yarn, threads, rubber, sand, wood, stone, tile, masonry, and metal.

(B) For purposes of enforcement policy, the Commission will enforce against materials such as, but not limited to, paints, crayons, colored pencils, glues, adhesives, and putties, if such materials are sold as part of an art, craft, model, or hobby kit. The Commission will enforce the LHAMA requirements against paints or other materials sold separately which are intended to decorate art, craft, model, or hobby items. Adhesives, glues, and putties intended for general repair are not subject to LHAMA. However, the Commission will enforce the LHAMA requirements against adhesives, glues, and putties sold separately (not part of a kit) if they are intended for art, craft, model, or hobby uses. This subparagraph (B) applies to products manufactured or imported six months or more after these regulations are published in the **Federal Register**.

(C) Nothing in this enforcement statement should be deemed to alter the requirement of the Federal Hazardous Substance Act that any hazardous substance intended or packaged in a form suitable for household use must be labeled in accordance with section 2(p) of the Act.

Dated: March 1, 1994.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 94–5289 Filed 3–7–94; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

Receipt of Domestic Interested Party Petition Concerning Country of Origin Marking for Cast Iron Soil Pipe

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

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition filed on behalf of domestic interested parties concerning the country of origin marking requirements for cast iron soil pipes used primarily to convey waste water. Currently, Customs has permitted the importation of such pipes if they are marked to indicate their country of origin by cast-in-mold letters on the lips or edges or hubs of the pipes. The petition requests that Customs adopt a new rule under which the marking of all cast iron soil pipes would have to appear on the barrel of

the pipe by paint stenciling in order to be considered conspicuous and legible and in compliance with the special marking requirements for pipes and tubes set forth at 19 U.S.C. 1304(c). Public comment is solicited regarding the application of these marking requirements to imported cast iron soil pipe.

DATES: Comments must be received on or before 60 days from the date of publication in the **Federal Register**.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the U.S. Customs Service, Regulations Branch, Office of Regulations and Rulings, 1301 Constitution Avenue, NW., (Franklin Court), Washington, DC. 20229. Comments may be viewed at the Office of Regulations and Rulings, Franklin Court, 1099 14th Street, NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Dinerstein, Value and Marking Branch, Office of Regulations and Rulings, U.S. Customs Service (202) 482–7010.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), and part 175, Customs Regulations (19 CFR part 175), a domestic interested party may challenge certain decisions made by Customs regarding imported merchandise which is claimed to be similar to the class or kind of merchandise manufactured, produced, or wholesaled by the domestic interested party. This document provides notice that domestic interested parties are challenging a marking decision made by Customs.

The petitioners are The American Brass & Iron Foundry and Charlotte Pipe and Foundry Company. Both of these entities are domestic interested parties within the meaning of section 516(a)(2), Tariff Act of 1930, as amended (19 U.S.C. 1516(a)(2)).

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. 1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product.

Section 207 of the Trade and Tariff Act of 1984, (Pub. L. 98–573), amended 19 U.S.C. 1304 to require, without exception, that all pipe, tube, and pipe fittings of iron or steel be marked to indicate the proper country of origin by means of die stamping, cast-in-mold lettering, etching or engraving. 19 U.S.C. 1304(c). In 1986, Congress enacted Public Law 99–514 which amended 19 U.S.C. 1304(c) to authorize alternative methods of marking if, because of the nature of an article, it is technically or commercially infeasible to mark by one of the four prescribed methods. The amendment, codified at 19 U.S.C. 1304(c)(2), provides that in such case, "the article may be marked by an equally permanent method of marking such as paint stenciling or in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles."

The petitioners contend that in order for the marking of the imported pipes to be considered conspicuous and legible and be in accordance with 19 U.S.C. 1304(c), they must be marked on their barrels by paint stenciling. Customs presently has no requirement for cast iron soil pipe to be marked in any particular location or that any method other than those specified in 19 U.S.C. 1304(c) be used to mark the pipe. Customs has allowed cast iron pipe to be marked on its side or lip with cast-in-mold letters. Counsel for the petitioners maintains that such marking is not conspicuous or legible and therefore is not in compliance with the requirements of the 19 U.S.C. 1304. It is alleged that the ultimate purchasers of the soil pipe, general contractors or plumbing subcontractors, are usually unable to determine the country of origin of the pipe because the marking is not conspicuous or legible. Petitioners have furnished several letters and statements from plumbing contractors attesting that it is important for them to know the country of origin of the soil pipe they install, but often they are unable to tell its country of origin.

Counsel for the petitioners contends that it is not technically and commercially feasible to conspicuously and legibly mark cast iron soil pipes by any of the four methods mentioned in 19 U.S.C. 1304(c)(1). Accordingly, petitioners argue that Customs should apply 19 U.S.C. 1304(c)(2) and require that cast iron soil pipes be marked by paint stenciling.

Previously, the petitioners requested a ruling on whether a sample soil pipe was legally marked. The marking was on the side or lip or hub of the pipe in cast-in-mold letters. Customs concluded that the marking was sufficiently conspicuous and legible to satisfy the requirements of 19 U.S.C. 1304 and that marking duties should not be assessed against entries of this merchandise. (Headquarters Letter 734818, March 31, 1993.) Petitioners believe that this determination is incorrect and challenge it. They claim that because the country of origin marking is at the end of the pipe, it is hard to find and in a location where users of the pipes do not expect to find such information. It is further represented that it is the American pipe industry's practice to put the important information about pipes on their barrels. The petitioners also point out that the markings are difficult to read because of the small surface area at the end of the pipes, the minimal thickness of the raised lettering, lack of color contrast, and because often a tar coating covers the lettering. The petition also states that the pipes are often stored in large stacks and that the ultimate purchaser would have to lift the end of each pipe to examine the marking, but this is usually not feasible because the pipes are heavy and delivered in large quantities.

We invite comments from the public as to whether marking on imported cast iron soil pipes by cast-in-mold letters on the side of pipe is sufficiently conspicuous and legible to satisfy the requirements of 19 U.S.C. 1304. We also seek comments as to whether the pipes can be conspicuously and legibly marked through one of the four methods mentioned in 19 U.S.C. 1304(c)(1), or if paint stenciling on the barrel of the pipe must be used to achieve a conspicuous and legible marking.

Comments

Pursuant to § 175.1(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties. The petition of the domestic interested party, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and section 103.11(b), Customs Regulations (19 CFR 103.11(b)) on regular business days between the hours of 9 a.m. and 4 p.m. at Regulations Branch, suite 4000, Franklin Court, 1099 14th Street, NW., Washington, DC 20229. Appointments to inspect the petition and comments can be made by contacting the Regulations Branch at 202–482–6970.

Authority

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal drafter of this document was Mr. Robert Dinerstein, Value and Marking Branch, U.S. Customs Service. Personnel from other Customs offices participated in its development.

George J. Weise,

Commissioner of Customs.

Approved: February 11, 1994

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 94–5262 Filed 3–7–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960–AC98

Supplemental Security Income for the Aged, Blind, and Disabled; Elimination of Waiting Period for Termination of Couple Status

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements section 8012(a) of the Omnibus Budget Reconciliation Act changed the definition of the term "eligible spouse" as it is used in the supplemental security income (SSI) program. Under the former definition of "eligible spouse," members of an SSI eligible couple who began living apart could not be treated as individuals for SSI eligibility and payment purposes during the first 6 months following the month in which they began living apart. The statutory change eliminated the 6-month waiting period. The proposed rule would revise the definition of "eligible spouse" contained in the regulations as well as make a number of other conforming changes. Finally, the rule would eliminate provisions in the regulations pertaining to eligible couples living apart.

DATES: To be sure that your comments are considered, we must receive them no later than May 9, 1994.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21235, sent by telefax to (410) 966–0869 or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone (410) 966–0512.

SUPPLEMENTARY INFORMATION: Section 1614(b) of the Social Security Act (the Act), as in effect until October 1, 1990, defined an eligible spouse as "an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who has not been living apart from such other aged, blind, or disabled individual for more than six months." One effect of this definition was to create a 6-month waiting period before the members of an eligible couple, who began living apart, could be treated as individuals for SSI purposes.

Section 8012 of Public Law 101–239 (the Omnibus Budget Reconciliation Act of 1989) eliminated the 6-month waiting period by revising the definition of an eligible spouse. Effective October 1, 1990, "eligible spouse" means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who is living with that eligible individual on the first day of the month, or, in any case in which either spouse files an application for benefits or requests restoration of eligibility under the SSI program during the month, at the time the application or request is filed.

The proposed rule revises the definition of "eligible spouse" in §§ 416.120(c)(14) and 416.1801(c) to reflect section 8012 of Public Law 101–239.

The legislative history does not indicate that Congress intended to treat couples who are temporarily separated as individuals. Therefore, the rule also provides in § 416.1801(c) that an individual is considered to be living with an eligible spouse during temporary absences as defined in § 416.1149 and while receiving continued benefits under section 1611(e)(1) (E) or (G) of the Act.

In addition to revising the definition of "eligible spouse" in §§ 416.120(c)(14) and 416.1801(c), a number of other sections in the regulations are being revised to eliminate provisions which refer to the prior rule for terminating eligible couple status based on a 6-month period of living apart. These sections are as follows:

- Section 416.305(b)(1) is being revised to remove language regarding the eligible spouse living apart from the eligible individual for a period of 6 months.
- Section 416.412 is being amended by using more precise language in the first sentence when referring to a member of an eligible couple temporarily residing in a medical care facility.
- Section 416.414 is being revised to specify that the computations in paragraphs (b)(2) and (b)(3) are applicable only when one or both members of an eligible couple are temporarily absent from home per § 416.1149(c)(1). As their absence is temporary, they are not separated.
- Section 416.430, which deals with essential person increments, is being revised by removing language regarding when the members of an eligible couple live apart and adding language to explain how to pay a couple when one member is temporarily absent and subject to the $30 payment limit while an inpatient at a medical facility where Medicaid is paying more than half the cost of care. The reference to § 416.531 is also being changed to § 416.413.
- In § 416.432, a portion of the introductory language and paragraphs (a) and (b) are being removed. The removed material concerns members of an eligible couple who have separated.
- Section 416.532(e), which provides for essential person increments when members of an eligible couple live apart, is being removed.
- In § 416.554, the last sentence of the text and example three regarding separated members of an eligible couple are being revised.
- In § 416.1130(c), the last sentence, which refers to members of an eligible couple who have different living arrangements, is being removed.
- In § 416.1147, paragraphs (a) and (d) are being removed and the remaining paragraphs are being revised and redesignated (a), (b), (c), and (d) respectively. The deleted material deals with valuation of in-kind support and maintenance for a member of an eligible couple who is separated from his or her spouse.
- Section 416.1802(b) is being revised to remove language referring to computation of benefits for separated members of an eligible couple.
- Section 416.1806 is being revised to contain rules on who will be considered

the individual's spouse, if more than one person would qualify.

• Section 416.1811 is being removed as a result of the revision to § 416.1806. The cross-reference to § 416.1811 in § 416.1101 (definition of "spouse") is also being removed.

• Section 416.1830(a)(1) is being revised to provide that, if the members of an eligible couple begin living apart, they will be treated as individuals beginning with the month following the calendar month they stopped living together.

• In § 416.1832(c) and (d), the cross-references to § 416.1806(b) and (c) respectively are being revised to refer to § 416.1806(a)(2) and (a)(3) respectively. This change is necessitated by the revision we are making to § 416.1806.

• Section 416.1832(d) is being revised to provide that, if a marital relationship has been found to exist solely because a man and woman are living together and leading others to believe that they are husband and wife, such marital relationship will be considered to end as of the date the man and woman stop living together.

Enactment of section 8012(a) of Public Law 101–239 has made the following Social Security Rulings (SSRs) obsolete: 76–28, 76–41, and 88–11c.

Regulatory Procedures

Regulatory Flexibility Act

We certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because it will affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act of 1980

This proposed regulation imposes no additional reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income).

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: January 13, 1994.

Shirley Chater,

Commissioner of Social Security.

Approved: February 22, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for subpart A is revised to read as follows:

Authority: Secs. 1102 and 1601–1634 of the Social Security Act; 42 U.S.C. 1302 and 1381–1383c; sec. 212 of Pub. L. 93–66, 87 Stat. 155 and sec. 502(a) of Pub. L. 94–241, 90 Stat. 268.

2. In § 416.120, paragraph (c)(14) is revised to read as follows:

§ 416.120 General definitions and use of terms.

* * * * *

(c) *Miscellaneous.* * * *

(14) "Eligible spouse" means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who is living with that individual (see § 416.1801(c)).

* * * * *

3. The authority citation for subpart C continues to read as follows:

Authority: Secs. 1102, 1611 and 1631(a), (d), and (e) of the Social Security Act; 42 U.S.C. 1302, 1382, 1383(a), (d), and (e).

4. In § 416.305, paragraph (b) introductory text is republished and paragraph (b)(1) is revised to read as follows:

§ 416.305 You must file an application to receive supplemental security income benefits.

* * * * *

(b) *Exceptions.* You need not file a new application if—

(1) You have been receiving benefits as an eligible spouse and are no longer living with your husband or wife;

* * * * *

5. The authority citation for subpart D continues to read as follows:

Authority: Secs. 1102, 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383.

6. Section 416.412 is revised to read as follows:

§ 416.412 Amount of benefits; eligible couple.

The benefit under this part for an eligible couple, neither of whom is temporarily residing in a medical care facility as described in § 416.1149(c)(1) nor is a qualified individual (as defined in § 416.221), shall be payable at the rate of $6,048 per year ($504 per month) after rounding, effective for the period beginning January 1, 1986. This rate is the result of a 3.1 percent cost-of-living adjustment (see § 416.405) to the December 1985 rate. For the period January 1, 1985, through December 31, 1985, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $5,856 ($488 per month). For the period January 1, 1984, through December 31, 1984, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $5,664 per year ($472 per month). For the period July 1, 1983, through December 31, 1983, the rate payable was $5,476.80 per year ($456.40 per month), as provided by the Social Security Amendments of 1983 (Pub. L. 98–21, Section 401). For the period July 1, 1982, through June 30, 1983, the rate, as increased by the 7.4 percent cost-of-living adjustment, was $5,116.80 yearly ($426.40 monthly). The monthly rate is reduced by the amount of the couple's income which is not excluded pursuant to subpart K of this part.

7. In § 416.414, the paragraph headings for paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 416.414 Amount of benefits; eligible individual or eligible couple in a medical care facility.

* * * * *

(b) * * *

(2) *Eligible couple both of whom are temporarily absent from home in medical care facilities as described in § 416.1149(c)(1).* * * *

(3) *Eligible couple with one spouse who is temporarily absent from home as described in § 416.1149(c)(1).* * * *

* * * * *

8. Section 416.430 is revised to read as follows:

§ 416.430 Eligible individual with eligible spouse; essential person(s) present.

(a) When an eligible individual with an eligible spouse have an essential person (§ 416.222) living in his or her home, or when both such persons each has an essential person, the increase in the rate of payment is determined in accordance with §§ 416.413 and 416.532. The income of the essential person(s) is included in the income of the couple and the payment due will be equally divided between each member of the eligible couple.

(b) When one member of an eligible couple is temporarily absent in accordance with § 416.1149(c)(1) and § 416.222(c) and either one or both individuals has an essential person, add the essential person increment to the

benefit rate for the member of the couple who is actually residing with the essential person and include the income of the essential person in that member's income. See § 416.414(b)(3).

9. Section § 416.432 is revised to read as follows:

§ 416.432 Change in status involving a couple; eligibility continues.

When there is a change in status which involves the formation or dissolution of an eligible couple (for example, marriage, divorce), a redetermination of the benefit amount shall be made for the months subsequent to the month of such formation or dissolution of the couple in accordance with the following rules:

(a) When there is a dissolution of an eligible couple and each member of the couple becomes an eligible individual, the benefit amount for each person shall be determined individually for each month beginning with the first month after the month in which the dissolution occurs. This shall be done by determining the applicable benefit rate for an eligible individual with no eligible spouse according to § 416.410 or § 416.413 and § 416.414 and applying § 416.420(a). See § 416.1147a for the applicable income rules when in-kind support and maintenance is involved.

(b) When two eligible individuals become an eligible couple, the benefit amount will be determined for the couple beginning with the first month following the month of the change. This shall be done by determining which benefit rate to use for an eligible couple according to § 416.412 or § 416.413 and § 416.414 and applying the requirements in § 416.420(a).

10. The authority citation for subpart E continues to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611(c), and 1631 (a), (b), (d), and (g) of the Social Security Act; 42 U.S.C. 1302, 1381, 1381a, 1382(c), and 1383 (a), (b), (d), and (g).

§ 416.532 [Removed]

11. In § 416.532, paragraph (e) is removed.

12. Section 416.554 is revised to read as follows:

§ 416.554 Waiver of adjustment or recovery—against equity and good conscience.

We will waive adjustment or recovery of an overpayment when an individual on whose behalf waiver is being considered is without fault (as defined in § 416.552) and adjustment or recovery would be *against equity and good conscience.* Adjustment or recovery is considered to be *against equity and good conscience* if an individual changed his or her position for the worse or relinquished a valuable right because of reliance upon a notice that payment would be made or because of the incorrect payment itself. In addition, adjustment or recovery is considered to be *against equity and good conscience* for an individual who is a member of an eligible couple that is legally separated and/or living apart, on a 6-month trip, for that part of an overpayment not received, but subject to recovery under § 416.570.

Example 1: Upon being notified that he was eligible for supplemental security income payments, an individual signed a lease on an apartment renting for $15 a month more than the room he had previously occupied. It was subsequently found that eligibility for the payment should not have been established. In such a case, recovery would be considered "against equity and good conscience."

Example 2: An individual fails to take advantage of a private or organization charity, relying instead on the award of supplemental security income payments to support himself. It was subsequently found that the money was improperly paid. Recovery would be considered "against equity and good conscience."

Example 3: Mr. and Mrs. Smith—members of an eligible couple—separate in July. Later in July, Mr. Smith receives earned income resulting in an overpayment to both. Mrs. Smith is found to be without fault in causing the overpayment. Recovery from Mrs. Smith of Mr. Smith's part of the couple's overpayment is waived as being *against equity and good conscience.* Whether recovery of Mr. Smith's portion of the couple's overpayment can be waived will be evaluated separately.

13. The authority citation for subpart K is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

§ 416.1110 [Amended]

14. In § 416.1101, the parenthetical reference in the definition of "*Spouse*" which reads "(See §§ 416.1806 through 416.1811)" is revised to read "(See § 416.1806)."

15. In § 416.1130, paragraph (c) is revised to read as follows:

§ 416.1130 Introduction.

* * * * *

(c) *How we value in-kind support and maintenance.* Essentially, we have two rules for valuing the in-kind support and maintenance which we must count. The one-third reduction rule applies if you are living in the household of a person who provides you with both food and shelter (§§ 416.1131 through 416.1133). The presumed value rule applies in all other situations where you are receiving countable in-kind support and maintenance (§§ 416.1140 through 416.1145). If certain conditions exist, we do not count in-kind support and maintenance. These are discussed in §§ 416.1141 through 416.1145.

16. Section 416.1147 is revised to read as follows:

§ 416.1147 How we value in-kind support and maintenance for a couple.

(a) *Both members of a couple live in another person's household and receive food and shelter from that person.* When both of you live in another person's household through-out a month and receive food and shelter from that person, we apply the one-third reduction to the Federal benefit rate for a couple (§ 416.1131).

(b) *One member of a couple lives in another person's household and receives food and shelter from that person and the other is in a medical institution.* If one of you is living in the household of another person who provides you with both food and shelter and the other is temporarily absent from the household as provided in § 416.1149(c)(1) (in a medical institution that receives Medicaid payments for his or her care (§ 416.211(b)), we compute your benefits as if you were separately eligible individuals (see § 416.414(b)(3)). This begins with the first full calendar month one of you is in the medical institution. The one living in another person's household is eligible at an eligible individual's Federal benefit rate and one-third of that rate is counted as income not subject to any income exclusions. The one in the medical institution cannot receive more than the rate described in § 416.414(b)(3)(i).

(c) *Both members of a couple are subject to the presumed value rule.* If the presumed value rule applies to both of you, we value any food, clothing, or shelter you and your spouse receive at one-third of the Federal benefit rate for a couple plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that their value is less as described in § 416.1140(a)(2).

(d) *One member of a couple is subject to the presumed value rule and the other is in a medical institution.* If one of you is subject to the presumed value rule and the other is temporarily absent from the household as provided in § 416.1149(c)(1) (in a medical institution that receives Medicaid payments for his or her care (§ 416.211(b)), we compute your benefits as if you were separately eligible individuals (see § 416.414(b)(3)). This begins with the first full calendar month that one of you is in the medical institution (§ 416.211(b)). We value any food, clothing, or shelter received by the

one outside of the medical institution at one-third of an eligible individual's Federal benefit rate, plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that their value is less as described in § 416.1140(a)(2). The one in the medical institution cannot receive more than the rate described in § 416.414(b)(3)(i).

17. The authority citation for subpart R continues to read as follows:

Authority: Secs. 1102, 1614(b), (c), and (d), and 1631(d)(1) and (e) of the Social Security Act; 42 U.S.C. 1302, 1382c (b), (c), and (d), and 1383 (d)(1) and (e).

18. In § 416.1801(c), the definition of "eligible spouse" is revised to read as follows:

§ 416.1801 Introduction

* * * * *

(c) * * *

Eligible spouse means a person—

(1) Who is eligible for SSI,

(2) Whom we consider the spouse of another person who is eligible for SSI, and

(3) Who was living in the same household with that person on—

(i) The date of filing an application for benefits (for the month of an application);

(ii) The date a request for reinstatement of eligibility is filed (for the month of such request); or

(iii) The first day of the month, for all other months.

An individual is considered to be living with an eligible spouse during temporary absences as defined in § 416.1149 and while receiving continued benefits under section 1611(e)(1) (E) or (G) of the Act.

* * * * *

19. In § 416.1802, paragraph (b) is revised to read as follows:

§ 416.1802 Effects of marriage on eligibility and amount of benefits.

* * * * *

(b) *If you have an eligible spouse*—(1) *Counting income.* If you apply for or receive SSI benefits and have an eligible spouse as defined in § 416.1801(c), we will count your combined income and calculate the benefit amount for you as a couple. Section 416.412 gives a detailed statement of the amount of benefits and subpart K of this part explains how we count income for an eligible couple.

(2) *Counting resources.* If you have an eligible spouse as defined in § 416.1801(c), we will count the value of your combined resources (money and property), minus certain exclusions, and use the couple's resource limit when we determine your eligibility. Section 416.1205(b) gives a detailed statement of the resource limit for an eligible couple.

* * * * *

20. Section 416.1806 is revised to read as follows:

§ 416.1806 Whether you are married and who is your spouse.

(a) We will consider someone to be your spouse (and therefore consider you to be married) for SSI purposes if—

(1) You are legally married under the laws of the State where your and his or her permanent home is (or was when you lived together);

(2) We have decided that either of you is entitled to husband's or wife's Social Security insurance benefits as the spouse of the other (this decision will not affect your SSI benefits for any month before it is made); or

(3) You and an unrelated person of the opposite sex are living together in the same household at or after the time you apply for SSI benefits, and you both lead people to believe that you are husband and wife.

(b) If more than one person would qualify as your husband or wife under paragraph (a) of this section, we will consider the person you are presently living with to be your spouse for SSI purposes.

§ 416.1811 [Removed]

21. Section 416.1811 is removed.

22. In § 416.1830, paragraph (a) is revised to read as follows:

§ 416.1830 When we stop considering you and your spouse an eligible couple.

* * * * *

(a) The calendar month after the month you stopped living with your eligible spouse, or

* * * * *

23. In § 416.1832, paragraphs (c) and (d) are revised to read as follows:

§ 416.1832 When we consider your marriage ended.

* * * * *

(c) We decide that either of you is not a spouse of the other for purposes of husband's or wife's social security insurance benefits, if we considered you married only because of § 416.1806(a)(2); or

(d) You and your spouse stop living together, if we considered you married only because of § 416.1806(a)(3).

[FR Doc. 94–4910 Filed 2–7–94; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 626

Office of the Assistant Secretary for Veterans' Employment and Training

20 CFR Part 1005

Job Training Partnership Act: Veterans' Employment Programs Under Title IV, Part C; Removal of Regulations

AGENCY: The Employment and Training Administration and the Office of the Assistant Secretary for Veterans' Employment and Training, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration and the Office of the Assistant Secretary for Veterans' Employment and Training (OASVET) propose to remove regulations for Veterans' Employment Programs authorized under title IV, part C, of the Job Training Partnership Act. Removal of the regulations is proposed because of the reduced number of states applying for state formula allocated monies, and the need to improve the delivery of services. Upon removal as proposed, a more competitive process will be established to increase effectiveness and the efficiency of the program.

DATES: Written comments must be received no later than April 7, 1994. Draft copies of the proposed rule were provided to States at an earlier date.

ADDRESSES: Comments shall be addressed to the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Attention: Mr. Hary P. Puente-Duany, Office of Veterans' Employment, Reemployment and Training, room S–1316.

FOR FURTHER INFORMATION CONTACT: Mr. Hary P. Puente-Duany at (202) 219–9110 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Job Training Partnership Act (JTPA) establishes programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased educational and occupational skills, and decreased welfare dependency, thereby improving the quality of the United States work force and enhancing the productivity and competitiveness of the Nation. General

program requirements for JTPA programs are set forth at JTPA section 141.

Pursuant to title IV, part C, of JTPA, the Secretary of Labor conducts programs to meet the employment and training needs of service-connected disabled veterans, veterans of the Vietnam era, and veterans who are recently separated from military service. These programs are described at JTPA section 441. The programs are administered through the Assistant Secretary of Labor for Veterans' Employment and Training, who conducts the programs through grants, contracts, and cooperative agreements with public agencies and private non-profit organizations.

The Department of Labor (DOL) issued regulations at 20 CFR part 1005 to more specifically define the manner in which the funds from this program would be disbursed. See 54 FR 39354 (September 26, 1989); and 48 FR 49198 (October 24, 1983). Program administration will be greatly enhanced as the result of the elimination of these regulations by increasing competition and lowering administration costs through larger grant amounts.

Part 1005 identifies the process used to provide grant funds to states for Federal training programs for veterans. At the conclusion of this rulemaking, it is anticipated that for Program Year 1994 (July 1, 1994, through June 30, 1995), a Solicitation for Grant Applications (SGA) will be developed and disseminated, in lieu of regulations for the title IV–C programs. The present formula-based annual grants will be replaced by multi-year competitive grants. This will result in fewer grants of greater dollar value, and will enable recipients of the grants to extend expanded service(s) to eligible veterans. Eligibility for grant application will be based on the statute and the Solicitation for Grant Applications.

Since the inception of Veterans' Employment Programs, the funding available for distribution to the States has decreased, thus making the "formula grants to States" process less efficient and less effective, compared to other JTPA titles and similar programs. In Program Year 1992, only 38 States participated in the JTPA title IV–C program. Many smaller States elected not to participate rather than receiving the minimum allocation of $55,000. By having larger competitive grants, services can be targeted to those eligible veterans in the "most needed" areas. Greater customer satisfaction is expected to be realized.

Immediate results will manifest themselves in the form of: Eliminated regulations; larger, but fewer grants; replacement of the "old" SGA process with SGA's that can be renewed, modified or changed as deemed necessary and drawn to incorporate by reference the essential parts and requirements of the JTPA and the Departmental JTPA regulations. See, *e.g.*, 20 CFR parts 627 and 636; and 29 CFR parts 96–98. It will be possible for JTPA title IV–C programs to be created to better enhance and complement other JTPA programs that do not focus on veterans' services, while continuing efforts to improve the targeting of employment and training services to eligible veterans who face serious barriers to employment. Larger multi-year grants will allow for enhancement of the quality of services provided and the outcomes attained by strengthening program activity through increased efficiency in the management of grants, improving the linkages between services provided and local labor market needs, and ensuring the provision of a coherent system of outcome-oriented human resource services through changes in the direction and focus of the Veterans' Employment Programs to eligible veterans.

It is important to complete all tasks necessary to remove the present JTPA title IV–C regulations to have appropriate authority and flexibility to announce and issue an SGA for program year 1994, in the manner detailed above.

This rulemaking supersedes that portion of the rulemaking announced at 56 FR 5124 (February 7, 1991) that related to JTPA title IV–C programs. In the comment period on that proposed rule (February 7 through April 8, 1991) no substantive comments were received with respect to the proposals related to JTPA title IV–C regulations.

Proposed Rule

Accordingly, it is proposed that title 20, Code of Federal Regulations, be amended as follows:

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

1. The authority citation for part 626 continues as follows:

Authority: 29 U.S.C. 1579(a); Sec. 6305f), Public Law 100–418, 102 Stat. 1107; 29 U.S.C. 179i(e).

§ 626.2 [Amended]

2. Section 626.2 is amended by removing from paragraph (a) the phrase ", with the exception of the veterans' employment program's chapter IX regulations of the Office of the Assistant Secretary for Veterans' Employment and Training, which are set forth as part 1005 of title 20".

§ 626.3 [Amended]

3. Section 626.3 is amended by removing from paragraph (a) the phrase "and part 1005 of chapter IX (Veterans' employment programs under title IV, part C of the Job Training Partnership Act)".

§ 626.4 [Amended]

4. Section 626.4 is amended:

a. By removing from the introductory text the citation "and 1005"; and

b. By removing from the consolidated table of contents the entry for part 1005 of chapter IX.

CHAPTER IX—OFFICE OF THE ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING, DEPARTMENT OF LABOR

PART 1005—VETERANS' EMPLOYMENT PROGRAMS UNDER TITLE IV, PART C OF THE JOB TRAINING PARTNERSHIP ACT (REMOVED)

5. Part 1005 of Chapter IX is removed.

Signed at Washington, DC, this 2nd day of March, 1994.

Douglas Ross,

Assistant Secretary for Employment and Training.

Preston M. Taylor, Jr.,

Assistant Secretary for Veterans Employment and Training.

[FR Doc. 94–5229 Filed 3–7–94; 8:45 am]

BILLING CODE 4510–79–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Oklahoma permanent regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to revegetation success standards and

statistically valid sampling techniques, and guidelines for phase I, II, and III bond release. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This document sets forth the times and locations that the Oklahoma program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.s.t. on April 7, 1994. If requested, a public hearing on the proposed amendment will be held on April 4, 1994. Requests to present oral testimony at the hearing must be received by 4 p.m., c.s.t. on March 23, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual under "FOR FURTHER INFORMATION CONTACT."

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, OK 74135, Telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 North Lincoln, suite 107, Oklahoma City, OK 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

II. Proposed Amendment

By letter dated February 17, 1994 (Administrative Record No. OK–959.01), Oklahoma submitted a proposed amendment to its program pursuant to SMCRA. Oklahoma submitted the proposed amendment with the intent of satisfying the required program amendments at 30 CFR 936.16 (a) through (i). Oklahoma proposes to amend the Bond Release Guidelines that are referenced in subsections 816.116(a) and 817.116(a)(1) of the Oklahoma rules. Specifically Oklahoma proposes to revise the Bond Release Guidelines at subsection I.E.3.b to require ground cover sufficient to control erosion for approved commercial or industrial land uses; subsection I.F.3.d to require, on areas previously disturbed by mining, that ground cover be at least 70 percent and sufficient to control erosion; subsection I.F.5.b to require that water discharged from permanent impoundments, ponds, diversions, and treatment facilities shall meet water quality effluent limitations; subsections II.B.2.d and III.B.2.d to reference appendix O for the method for calculating a technical success standard for productivity on, respectively, pastureland and grazingland; subsection V.B.2.c to reference appendix P for the method for calculating a technical success standard for productivity of row crops on prime farmland cropland, subsection V.B.2.d to add criteria regarding the selection of test plots for demonstrating success of productivity on prime farmland cropland; subsection V.B.2.e to reference appendix O for the method for calculating a technical success standard for productivity of grain or hay crops on prime farmland cropland; subsection VI.B.2.e to reference appendices P and Q for the methods for calculating technical success standards for productivity of, respectively, row crops and grain or hay crops on nonprime farmland cropland; appendix A to add the definition of "initial establishment of permanent vegetative cover;" appendices J and P to correct typographical errors; and appendix V, to add a technical document reference. In addition, Oklahoma submitted a letter, dated February 1, 1994, from the U.S. Soil Conservation Service that was intended to provide concurrence with appendix R concerning the repair of rills and gullies as a normal husbandry practice.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m., c.s.t. on March 23, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the date and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 28, 1994.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 94–5225 Filed 3–7–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD14–93–003]

RIN 2115–AA98

Anchorage Ground; Pacific Ocean (Mamala Bay), Honolulu Harbor, HI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to eliminate the existing anchorage ground for nitrate laden vessels off Honolulu Harbor and establish four new anchorage grounds. The purpose of the regulation is to provide safe anchorage grounds for commercial vessels off Honolulu Harbor.

DATES: Comments must be received on or before May 9, 1994.

ADDRESSES: Comments may be mailed to Commander (oan), Fourteenth Coast Guard District, Prince Kalanianaole Federal building, 300 Ala Moana Blvd., Honolulu, Hawaii 96850–4982, or may be delivered to room 9139 at the above address between 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments the telephone number is (808) 541–2315.

The Fourteenth Coast Guard District Aids to Navigation Branch maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 9139 at the above address.

FOR FURTHER INFORMATION CONTACT: Lt S.S. Beckerman, (808) 541–2315.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD14–93–003) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander, Aids to Navigation Branch at the address under **ADDRESSES.** If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Lt S.S. Beckerman, Project Manager, and Cdr B.N. Durham, Project Counsel.

Background and Purpose

The anchorage for nitrate laden vessels off Honolulu Harbor is a hold over from World War II and is no longer needed. It encompasses much of the area available for commercial vessels to anchor off Honolulu Harbor. Eliminating the no longer needed nitrate laden anchorage would free up the area to establish four new anchorages and provide for better usage of the area available for anchoring. This proposal was initiated at the request of the State of Hawaii. The District Engineer, U.S. Army Corps of Engineers, has been contacted and has no objection to the issuance of this regulation.

Discussion of Proposed Amendments

Under existing state regulations, all vessels are prohibited from anchoring off Waikiki and to the east of Waikiki. These regulations protect the beaches from potential oil spills which could damage the local tourist industry. The area west of Waikiki off Honolulu Harbor provides the only suitable anchorage area available for commercial vessels. With the exception of the nitrate laden vessel anchorage, vessels are currently anchoring in the area proposed. This proposal would bring the regulations in line with current practice.

Regulatory Evaluation

This proposal is not considered 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 proposal to be so minimal that a Regulatory Evaluation is unnecessary. The only effect of this regulation is to formally establish anchorage grounds for commercial vessels off Honolulu Harbor in areas where they presently anchor. The proposed regulation will not restrict access to any fairway or channel, or limit access to any facility or area previously accessible to vessels. The primary intent of the proposed regulation is to designate anchorages for commercial vessels off Honolulu Harbor.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.c of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.235 is revised to read as follows:

§ 110.235 Pacific Ocean (Mamala Bay), Honolulu Harbor, Hawaii.

(Datum: NAD 83)

(a) *The anchorage grounds*—(1) *Anchorage A.* The waters bounded by the arc of a circle with a radius of 350 yards with the center located at:

Latitude	*Longitude*
21°16′57″ N	157°53′12″ W

(2) *Anchorage B.* The waters bounded by a line connecting the following coordinates:

Latitude	*Longitude*
21°17′06″ N	157°54′40″ W; to
21°17′22″ N	157°54′40″ W; to
21°17′22″ N	157°54′19″ W; to
21°17′06″ N	157°54′19″ W; thence back to
21°17′06″ N	157°54′40″ W

(3) *Anchorage C.* The waters bounded by the arc of a circle with a radius of 450 yards with the center located at:

Latitude	*Longitude*
21°17′09″ N	157°54′55″ W

(4) *Anchorage D.* The waters bounded by the arc of a circle with a radius of 450 yards with the center located at:

Latitude	*Longitude*
21°17′21″ N	157°55′20″ W

(b) *The regulations.* (1) Anchors must be placed inside the anchorage areas.

(2) The anchorages are general anchorages for commercial vessels.

(3) No bunkering operations or vessel to vessel transfer of oil in bulk of any kind is permitted within Anchorage A. Anchorage A should be used only if Anchorages B, C, and D are full.

(4) Nothing in this section shall be construed as relieving the owner or person in charge of any vessel from complying with the rules of navigation and with safe navigation practice.

Dated: February 22, 1994.

H.B. Gehring,

Commander, 14th CG District.

[FR Doc. 94–5282 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Southeast Alaska 94–002]

RIN 2115–AA97

Safety Zone; Crescent Harbor, Sitka, AK

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is proposing to establish a permanent safety zone in Crescent Harbor. The safety zone would protect life, limb and property during the annual Independence Day fireworks display. The fireworks are launched from a barge or waterfront facility, creating a safety hazard. Annual notice of these regulations would be published in the Local notices to Mariners.

DATES: Comments must be received on or before May 9, 1994.

ADDRESSES: Comments may be mailed or hand delivered to the United States Coast Guard Marine Safety Office, 2760 Sherwood Lane, suite 2A, Juneau, AK 99801. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in the Port Operations Department. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Andrew Tucci, Project Manager, United States Coast Guard Marine Safety Office Juneau, (907) 463–2465.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice [COTP SOUTHEAST ALASKA 94–002] and the specific section of the proposal to which each comment applies, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The United States Coast Guard Marine Safety Office Juneau maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the address under **ADDRESSES.**

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the United States Coast Guard Marine Safety Office Juneau at the address under ADDRESSES. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are LTJG Andrew Tucci, Project Manager, and LT Brian McTague, Project Attorney, Seventeenth Coast Guard District.

Background and Purpose

The community of Sitka, Alaska holds a fireworks display on or about the 4th of July of each year to celebrate Independence Day. The fireworks are launched from a barge or waterfront facility in Crescent Harbor. There is a well established need for safety zones around vessels and facilities holding fireworks displays. Such displays draw large numbers of spectators on vessels. Both persons and vessels could be endangered by coming too close to the source of the displays. In addition to improving safety, this regulation will reduce the administrative burden associated with the creation of temporary safety zones each year.

Regulatory Evaluation

This proposal 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 has determined that a Regulatory Evaluation is unnecessary because of the minimal impact expected. The proposed safety zones will not affect commerce and will be in effect for only a few hours each year.

Small Entities

Because it expects the impact of the proposal to be minimal, the Coast Guard certifies under 5 U.S.C. § 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see ADDRESSES) explaining why your business qualifies and in what way and to what degree this proposal will economically effect your business.

Collection of Information

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

Federalism

This proposed rule has been analyzed in accordance with Executive Order No. 12612 on Federalism (October 26, 1987), which requires Executive departments and agencies to be guided by certain fundamental principles in formulating and implementing polices. These policies have been fully considered in the development of the proposed regulation. This proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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 § 165.1707 is added to read as follows:

§ 165.1707 Crescent Harbor, Sitka, Alaska-safety zone.

(a) *Location.* The following area is a safety zone: the waters in Crescent Harbor within a 100 yard radius of the vessel or waterfront facility located at 57°02'54" N, 135°19'32" W used to conduct fireworks displays.

(b) *Effective date.* The safety zone becomes effective on July 3 each year at 10 p.m. ADT. It terminates at the conclusion of the fireworks display at approximately 2:30 a.m. ADT on July 5 each year, unless sooner terminated by the Captain of the Port. If the fireworks display is postponed because of inclement weather, the date and duration of the safety zone will be announced in the Local Notices to Mariners.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Southeast, Alaska.

Dated: February 1, 1994.

G.D. Powers,

Commander, Coast Guard, Captain of the Port, Southeast Alaska.

[FR Doc. 94–5283 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Southeast Alaska 94–001]

RIN 2115–AA97

Safety Zone; Gastineau Channel, Juneau, AK

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is proposing to establish a permanent safety zone in Juneau Harbor. The safety zone would protect life, limb and property during the annual Independence Day fireworks display. The fireworks are launched from a barge or waterfront facility, creating a safety hazard. Annual notice of these regulations would be published in the Local Notices to Mariners.

DATES: Comments must be received on or before May 9, 1994.

ADDRESSES: Comments may be mailed or hand delivered to the United States Coast Guard Marine Safety Office, 2760 Sherwood Lane, suite 2A, Juneau, AK 99801. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in the Port Operations Department. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Andrew Tucci, Project Manager, United States Coast Guard Marine Safety Office Juneau, (907) 463–2465.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names

and addresses, identify this notice [COTP SOUTHEAST ALASKA 94–001] and the specific section of the proposal to which each comment applies, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The United States Coast Guard Marine Safety Office Juneau maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the address under **ADDRESSES**.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the United States Coast Guard Marine Safety Office Juneau at the address under **ADDRESSES**. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are LTJG Andrew Tucci, Project Manager, and LT Brian McTague, Project Attorney, Seventeenth Coast Guard District.

Background and Purpose

The City and Borough of Juneau, Alaska holds a fireworks display on or about the 4th of July of each year to celebrate Independence Day. The fireworks are launched from a barge or waterfront facility in Juneau Harbor. There is a well established need for safety zones around vessels and facilities holding fireworks displays. Such displays draw large numbers of spectators on vessels. Both persons and vessels could be endangered by coming too close to the source of the displays. In addition to improving safety, this regulation will reduce the administrative burden associated with the creation of temporary safety zones each year.

Regulatory Evaluation

This proposal 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 has determined that a Regulatory Evaluation is unnecessary because of the minimal impact expected. The proposed safety zones will not affect commerce and will be in effect for only a few hours each year.

Small Entities

Because it expects the impact of the proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining why your business qualifies and in what way and to what degree this proposal will economically effect your business.

Collection of Information

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

Federalism

This proposed rule has been analyzed in accordance with Executive Order No. 12612 on Federalism (October 26, 1987), which requires Executive departments and agencies to be guided by certain fundamental principles in formulating and implementing policies. These policies have been fully considered in the development of the proposed regulation. This proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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 § 165.1706 is added to read as follows:

§ 165.1706 Gastineau Channel, Juneau, Alaska-safety zone.

(a) *Location.* The following area is a safety zone: the waters in Juneau Harbor within a 100 yard radius of the vessel or waterfront facility located at 58°17′41″ N, 134°24′22″ W used to conduct fireworks displays.

(b) *Effective date.* The safety zone becomes effective on July 3 each year at 10 p.m. ADT. It terminates at the conclusion of the fireworks display at approximately 2:30 a.m. ADT on July 5 each year, unless sooner terminated by the Captain of the Port. If the fireworks display is postponed because of inclement weather, the date and duration of the safety zone will be announced in the Local Notices to Mariners.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Southeast Alaska.

Dated: February 1, 1994.

G.D. Powers,

Commander, Coast Guard, Captain of the Port, Southeast Alaska.

[FR Doc. 94–5284 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–92–004]

Safety Zone; Rhode Island Sound, Narragansett Bay, Providence River

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the regulation concerning the safety zone required around LPG vessels moored at the LPG facility in the Port of Providence. The amendment would reduce the distance a vessel must moor from an LPG vessel at the LPG facility in the Port of Providence, from 400 feet to 200 feet. This action is necessary to eliminate unnecessary economic hardship on the commercial shipping industry. Reduction of the required empty pier space from 400 feet to 200 feet fore and aft of LPG vessels will continue to provide the necessary level of safety and will also provide the space necessary to respond effectively to an LPG emergency.

DATES: Comments must be received on or by June 6, 1994.

ADDRESSES: Comments should be mailed to the Commanding Officer,

Marine Safety Office, 20 Risho Avenue, East Providence, RI 02914–1215, or may be delivered to the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (401) 435–2300. The Marine Safety Office maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Marine Safety Office Providence.

FOR FURTHER INFORMATION CONTACT: LTJG Timothy W. Pavilonis at (401) 435–2300.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LTJG Timothy W. Pavilonis, Project Officer, Marine Safety Office Providence, and LCDR J. Stieb, Project Counsel, First Coast Guard District Legal Office.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD01–92–004) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Office at the address under **ADDRESSES.** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Regulatory History

The Coast Guard published a notice of Proposed Rulemaking, CGD01–92–004, on June 4, 1992. As a result of this NPRM, one comment was received. Since then, the project officer was reassigned and Marine Safety Office Providence was relocated. During this time period, the docket was misplaced. This Supplemental Notice of Proposed Rulemaking is being published to provide additional opportunity for public comment. No information is presently available concerning the comment previously received. The rule is the same as it was initially proposed, but now contains a new comment period and a new address and phone number for Marine Safety Office Providence, and updated drafting information.

Background and Purpose

The regulations contained in 33 CFR 165.121 outline safety zones required for LPG vessels visiting the Port of Providence under a variety of conditions. The regulations establish safety zones around LPG vessels at anchor, transiting Narragansett Bay, while moored at the LPG facility, Port of Providence, and around the shoreside manifold during LPG transfer operations. The proposed amendment only concerns the safety zone required around LPG vessels moored at the LPG facility, Port of Providence.

33 CFR 165.121(a)(3) establishes a 50 foot safety zone around a moored LPG vessel and also requires that no vessel may moor within 400 feet of an LPG vessel moored at the facility. Industry personnel have continually expressed dissatisfaction with the 400 foot requirement, contending that it places an unnecessary economic burden on the industry involved in and affected by LPG evolutions.

Coast Guard research into the issue has shown that prohibiting vessels from mooring within 400 feet from LPG vessels at the LPG facility is excessive and unnecessary. The safety zone established around a moored LPG vessel is 50 feet. Since the LPG vessel is considered safe from ignition sources at a minimum of 50 feet, a 200 foot separation from other moored vessels provides both ignition source protection and adequate space for shoreside and waterside firefighting or emergency tug assistance.

Regulatory Evaluation

This proposal 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 proposal to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact of this proposal to be minimal on all entities because the result of the amendment will be one of deregulation, making the present regulations less restrictive. If the amendment has any effect, it will be a positive effect on impacted entities. Reduction of the safety zone around moored LPG vessels from 400 feet to 200 feet will benefit the LPG facility economically in that the total pier space for which they must pay to meet the regulations is reduced from a total of 800 feet to 400 feet. This will also benefit the port of Providence economically in that more pier space will be available for other ships to moor while an LPG vessel is in port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons discussed in the Regulatory Evaluation, the Coast Guard expects that this proposal will not have a significant economic impact on any entity. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

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

Federalism

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

Environment

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

docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

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

Proposed Regulation

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

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. Section 165.121 is amended by revising paragraph (a)(3) to read as follows:

§ 165.121 Safety Zone: Rhode Island Sound, Narragansett Bay, Providence River.

(a) * * *

(3) For Liquefied Petroleum Gas (LPG) vessels while moored at the LPG facility, Port of Providence; a safety zone within 50 feet around the vessel. No vessel shall moor within 200 feet from the LPG vessel. All vessels transiting the area are to proceed with caution to minimize the effects of wake around the LPG vessel.

* * * * *

Dated: February 22, 1994.

H.D. Robinson,

Captain, Coast Guard, Captain of the Port, Providence, RI.

[FR Doc. 94–5285 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Southeast Alaska 94–003]

RIN 2115–AA97

Safety Zone; Tongass Narrows, Ketchikan, AK

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a permanent safety zone in Tongass Narrows, Ketchikan, Alaska. The safety zone will protect life, limb and property during Independence Day fireworks displays. The fireworks are launched from a barge at the northern most tip of Pennock Island, creating a safety hazard. Annual notice of these regulations would be published in the Local Notices to Mariners.

DATES: Comments must be received on or before May 9, 1994.

ADDRESSES: Comments may be mailed or hand delivered to the United States Coast Guard Marine Safety Office, 2760 Sherwood Lane, suite 2A, Juneau, AK 99801. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in the Port Operations Department. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Andrew Tucci, Project Manager, United States Coast Guard Marine Safety Office Juneau, (907) 463–2465.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice [COTP SOUTHEAST ALASKA 94–003] and the specific section of the proposal to which each comment applies, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The United States Coast Guard Marine Safety Office Juneau maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the address under ADDRESSES.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the United States Coast Guard Marine Safety Office Juneau at the address under ADDRESSES. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are LTJG Andrew Tucci, Project Manager, and LT Brian McTague, Project Attorney, Seventeenth Coast Guard District.

Background and Purposes

The community of Ketchikan, Alaska holds a fireworks display on or about the 4th of July of each year to celebrate Independence Day. The fireworks are launched from a vessel at the northernmost point of Pennock Island. There is a well established need for safety zones around vessels and facilities holding fireworks displays. Such displays draw large numbers of spectators on vessels. Both persons and vessels could be endangered by coming too close to the source of the displays. In addition to improving safety, this regulation will reduce the administrative burden associated with the creation of temporary safety zones each year.

Regulatory Evaluation

This proposal 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 has determined that a Regulatory Evaluation is unnecessary because of the minimal impact expected. The proposed safety zones will not affect commerce and will be in effect for only a few hours each year.

Small Entities

Because it expects the impact of the proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities. If, however, you think that you business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see ADDRESSES) explaining why your business qualifies and in what way and to what degree this proposal will economically effect your business.

Collection of Information

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

Federalism

This proposed rule has been analyzed in accordance with Executive Order No. 12612 on Federalism (October 26, 1987), which requires Executive departments and agencies to be guided by certain fundamental principles in formulating and implementing policies. These policies have been fully considered in the development of the proposed regulation. This proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section

2.B.2.c. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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(2), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new § 165.1708 is added to read as follows:

§ 165.1708 Tongass Narrows, Ketchikan, Alaska-safety zone.

(a) *Location.* The following area is a safety zone: The waters in Tongass Narrows within a 100 yard radius of the barge located at 55° 20′ 20″ N, 131° 39′ 36″ W used to conduct fireworks displays.

(b) *Effective date.* The safety zone becomes effective on July 3 each year at 10 p.m. ADT. It terminates at the conclusion of the fireworks display at approximately 2:30 a.m. ADT on July 5 each year, unless sooner terminated by the Captain of the Port. If the fireworks display is postponed because of inclement weather, the date and duration of the safety zone will be announced in the local Notices to Mariners.

(c) *Regulation.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Southeast Alaska.

Dated February 1, 1994.

G.D. Power,

Commander, Coast Guard, Captain of the Port, Southeast Alaska.

[FR Doc. 94–5286 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–4846–4]

Land Disposal Restrictions for Newly Identified and Listed Hazardous Wastes and Hazardous Soil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Clarification.

SUMMARY: On September 14, 1993 EPA published a proposed rulemaking entitled "Land Disposal Restrictions (LDRs) for Newly Identified and Listed Hazardous Wastes and Hazardous Soil" (58 FR 48092). A portion of that proposed rule addressed RCRA alternative land disposal restrictions that would specifically apply to soils that are subject to regulation under RCRA subtitle C because they exhibit a hazardous characteristic, or contain listed hazardous wastes. In addition, the proposal would have codified the "contained in" policy for contaminated media.

On November 12, 1993 EPA extended the comment period for these specific provisions of the September 14, 1993 proposal, to March 15, 1994. EPA has subsequently decided that these regulatory proposals should be addressed as part of the Hazardous Waste Identification Rule (HWIR) for contaminated media, rather than as part of the original LDR rule. This supplemental document is intended to clarify the Agency's intentions with regard to finalizing these specific provisions, and reiterate EPA's original request for data relating to treatment of hazardous soils.

DATES: Comments and data on the LDR alternative treatment standards for hazardous soils and the codification of the contained-in policy, as described in the September 14, 1993 proposed rule, will be most useful to the Agency if submitted on or before March 15, 1994.

ADDRESSES: The public must send an original and two copies of their written comments to the EPA Docket (mail code 5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the Docket Number F–92–CS2P-FFFF on your comments. The RCRA Docket is located in room 2616 at the above address, and is open from 9 am to 4 pm Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll free) or 412–9810 locally. For information on this supplemental notice, contact Carolyn Loomis in the Corrective Action Programs Branch, Office of Solid Waste (mail code 5303W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703) 308–8626.

SUPPLEMENTARY INFORMATION:

I. The Hazardous Waste Identification Rule for Contaminated Media

The Hazardous Waste Identification Rule for Contaminated Media, which is being developed by EPA in concert with the States and with affected stakeholders, is intended to create a comprehensive regulatory framework within RCRA subtitle C that will apply to the management of contaminated media that are managed as part of remediation activities. This HWIR rule is intended to replace the existing regulatory system under RCRA, which heretofore has regulated the management of hazardous contaminated media in much the same way that "as generated" hazardous wastes are regulated.

Through the public dialogue process, a conceptual framework has been developed for this rule. As currently envisioned, a major component of the HWIR rule would involve the establishment of treatment standards for soils (and possibly other media) that would be subject to HWIR requirements. This would include soils that are highly contaminated (i.e., contaminated at levels above a specified "bright line" threshold level), while contaminated soils that are less highly contaminated would be subject to more flexible, site-specific management requirements established by the overseeing regulatory agency.

EPA currently intends to use the HWIR rulemaking as the vehicle for establishing treatment standards for hazardous soils. Thus, those provisions of the September 14, 1993 proposal addressing treatment standards for contaminated soil will not be promulgated with the remaining portions of the LDR rules proposed in September, 1993. Although the HWIR rule for contaminated media is being developed on a less accelerated schedule than the LDR rules, EPA believes that it is appropriate to address the issue of setting treatment standards for soils that are contaminated above the "bright line" within the broader framework of the HWIR rule, since such

treatment requirements are expected to be an integral part of that rule. Addressing these requirements within the HWIR rule will thus allow EPA, the States and others participating in the process to carefully examine the various options for setting soil treatment standards with the context of that broader regulatory framework. EPA notes that the deadline for final rulemaking imposed on some elements of the September 14, 1993 proposal by the proposed consent decree in *EDF* v. *Browner* (D.D.C., C.A. No. 89–0598) does not apply to the soil treatment standards.

It should be understood that by deferring these provisions of the LDR proposal to the HWIR rulemaking effort, hazardous soils will continue to be subject to the LDR standards that apply to the hazardous wastes with which the soils are contaminated. When the LDR rules that were proposed in September, 1993 are finalized, the LDR treatment standards that apply to the wastes addressed in that rule will also apply to soils that contain those wastes, as has been the case in previous LDR rulemakings. It should also be noted, however, that existing provisions for LDR treatability variances will remain in effect, and that EPA has determined that treatability variances from waste-specific LDR standards are generally appropriate for contaminated soil and debris (see 55 FR 8759–8760, March 8, 1990; 40 CFR 260.44(h)).

II. Request for Data

In the preamble to the LDR proposal, the Agency solicited comment on the soil treatment data which were used by the Agency as the basis for that proposal. In adddition, new data on soil treatment were solicited, particularly data pertaining to treatment levels that have been achieved or that could be achieved by application of various technologies to different matrices of soil types and contaminants. EPA recognizes the importance of collecting as much of this type of data as possible; such additional data may be very valuable in evaluating various approaches for establishing soil treatment standards under the HWIR rule. EPA therefore reiterates its request for such additional soil treatment data. The data should be provided to the Agency at the address provided at the beginning of this notice; the Agency will be able to make best use of data that are submitted by March 15, 1994. EPA notes that the public will have another full opportunity to comment on proposed treatment standards for contaminated soils when EPA publishes the HWIR proposal.

III. Codification of the Contained-In Policy

In the September 14, 1993 proposal, EPA also proposed to codify its longstanding "contained-in" policy. This policy addresses the RCRA regulatory status of media—including soils—that are contaminated with (i.e., that "contain") listed hazardous wastes. EPA believes that the contained-in concept is one of the key issues that must be addressed in the development of a comprehensive regulatory framework for management of contaminated media. Thus, the Agency has decided to also defer this provision of the proposal to the HWIR rulemaking. Comments on the proposed codification of the contained-in policy are solicited, however, and will be considered as part of the HWIR rulemaking process. Comments provided by March 15, 1994 will be most useful to the Agency in evaluating how the contained-in concept may be addressed in the context of the HWIR rulemaking.

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6924.

Dated: March 1, 1994.

Elliott P. Laws,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 94–5147 Filed 3–7–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–94; Notice 2]

RIN 2127–AE47

Federal Motor Vehicle Safety Standards; Antilock Brake Systems for Light Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking; notice to extend comment period.

SUMMARY: In response to a petition submitted by Advocates for Highway and Auto Safety, this notice extends the comment period for an advance notice of proposed rulemaking (ANPRM) that seeks comments about the need to require antilock brake systems on passenger cars and other light vehicles. NHTSA believes that commenters need more time to formulate their responses given the complexity of the issues and the agency's delay in docketing the Preliminary Economic Assessment (PEA). Accordingly, the agency has decided to extend the comment period from March 7, 1994 to April 6, 1994.

DATES: Comments on the advance notice of proposed rulemaking, Docket 93–94, Notice 1, must be received on or before April 6, 1994.

ADDRESSES: Comments should refer to Docket No. 93–94, Notice 1 and be submitted to: Docket Section, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 9:30 to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. George Soodoo, Office of Rulemaking, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–5892).

SUPPLEMENTARY INFORMATION: On January 4, 1994, NHTSA published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (59 FR 281). The notice requested comments regarding the braking performance of passenger cars and other light vehicles and the need to require antilock brake systems (ABS) on these vehicles. The ANPRM posed questions about the desirability of a requirement that light vehicles be equipped with ABS, including questions about such a requirement's anticipated safety benefits, potential regulatory approaches and anticipated performance requirements and test procedures, the requirement's applicability, its schedule for implementation, and the anticipated costs. The notice specified that comments had to be submitted on or before March 7, 1994.

Advocates for Highway and Auto Safety (Advocates) petitioned the agency to extend the comment period an additional 30 days. Advocates stated that they needed additional time to respond to the rulemaking in a timely manner since the preliminary economic assessment (PEA) had yet to be submitted to the public docket when it contacted the agency in late January.

After reviewing the petition, NHTSA agrees with the petitioner that extending the comment closing date is desirable, given that a variety of complex issues are raised in the notice addressing whether the agency should propose to require that light vehicles be equipped with antilock brake systems. In addition, the agency believes that the petitioner and other commenters need more time to review the PEA since many questions in the ANPRM address the costs and benefits of this rulemaking. An extension of the comment period will allow the petitioner and other commenters more

time to better address the issues raised in the ANPRM.

Based on the above considerations, the agency concludes that there is good cause to extend the comment period an additional 30 days and that this decision is consistent with the public interest. Accordingly, the agency has decided to extend the comment period until April 6, 1993.

Issued on: March 2, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–5189 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 59, No. 45
Tuesday, March 8, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Tusayan Land Exchange, Kaibab National Forest, Coconino County, AZ

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on a proposed land exchange in the Kaibab National Forest. The EIS will examine the environmental impacts of implementing the proposed action and alternatives, including no-action.

DATES: Comments concerning the scope of the analysis should be received in writing by May 30, 1994.

ADDRESSES: Send written comments to Tusayan Exchange, Kaibab National Forest, 800 South Sixth Street, Williams, Arizona 86046.

RESPONSIBLE OFFICIAL: Forrest Carpenter, Deputy Regional Forester for Resources, Southwestern Region, 517 Gold Avenue SW, Albuquerque, New Mexico 87102, is the Responsible Official.

FOR FURTHER INFORMATION CONTACT: Questions about the EIS should be directed to Dennis Lund, Forest Lands Staff Officer, (602) 635–2681.

SUPPLEMENTARY INFORMATION: The nature and scope of the decision to be made is to determine whether or not to exchange certain selected Federal lands in the Tusayan Ranger District, Kaibab National Forest, for certain offered private parcels within the Tusayan Ranger District, Kaibab National Forest.

Some of the selected Federal lands considered for exchange are not designated in the Kaibab Forest Plan as base-for-exchange (lands available for private ownership through exchange). The proposed action would require the designation of additional base-for-exchange lands which will require an amendment to the Kaibab Forest Plan.

The proposed action involves the following lands:

Approximate location	Acres
Offered Private Lands within the Kaibab National Forest:	
T28N, R3E, Section 15	150.00
T28N, R4E, Sections 5 and 8	120.00
T28N, R6E, Section 23	160.00
T29N, R6E, Sections 5, 6 and 8	279.15
T30N, R3E, Sections 28, 29, 33 and 34	173.54
T29N, R3E, Sections 3 and 4	21.12
T30N, R5E, Sections 29 and 30	146.31
T30N, R2E, Sections 14 and 23	160.00
Total Offered Private Lands	1,210.10
Selected Federal Lands within the Kaibab National Forest:	
T29N, R2E, Sections 1 and 2	720.00
T30N, R2E, Sections 25, 35 and 36	640.00
T29N, R3E, Section 32	40.00
Total Selected Federal Lands	1,400.00

The Forest Service and the exchange proponent have jointly described a parcel of Federal land comprising approximately 1,360 acres (selected Federal lands in T29N, R2E and T30N, R2E) from which a final, smaller sized parcel of land of approximately 640 acres will be selected as exchange property. The precise acreage will be determined by appraisal.

The EIS will consider a range of alternatives, including the proposed action and no-action alternative. Other alternatives could include various combinations of offered private lands and selected Federal lands.

Public participation, or scoping (40 CFR 1501.7), will be important throughout the analysis. The Forest Service, as lead agency, will be seeking information, comments and assistance from Federal, State and local agencies, as well as other individuals and organizations who may be interested in or affected by the proposed land exchange. The Forest Service will notify interested publics of opportunities to participate through meetings, personal contacts and written comment. The scoping process will include preparation of an informational mailing, solicitation of written comments and public scoping meetings, according to the following schedule:

Date	Time	Location
Saturday, March 19	10 am–2 pm	Havasupai School, Supai, Arizona.
Wednesday, March 23	2 pm–6 pm	Cameron Chapter House, Cameron, Arizona.
Thursday, March 24	10 am–Noon	Hopi Civic Center, Second Mesa, Arizona.
Tuesday, March 29	4 pm–8 pm	Hualapai School, Peach Springs, Arizona.
Monday, March 28	2 pm–6 pm	Tuba City Chapter House, Tuba City, Arizona.
Tuesday, April 19	Noon–8 pm	Little America, 2515 East Butler, Flagstaff, Arizona.
Wednesday, April 20	Noon–8 pm	Moqui Lodge, Highway 64/180, Tusayan, Arizona.
Tuesday, April 26	Noon–8 pm	Holiday Inn Express, 831 W. Bill Williams Avenue., Williams, Arizona.
Wednesday, April 27	Noon–8 pm	Embassy Suites Hotel, 1515 North 44th Street, Phoenix, Arizona.

Input received at the public scoping meeting and from the informational mailing will be used in preparation of the draft and final EIS to:

1. Identify potential environmental issues, including significant issues to be analyzed in depth in the EIS;
2. Identify alternatives to the proposed action that will address the significant environmental issues;
3. Identify environmental effects of the proposed action and alternatives that will require analysis in the EIS, and;
4. Determine potential cooperating agencies and task assignments.

Preliminary issues which have been identified include the socioeconomic impacts of the proposed exchange on surrounding communities, as well as at the county and State levels, the

availability of water for development of the selected Federal lands and the impact of any proposed development on existing water users, impacts on the management of and visitation to Grand Canyon National Park, impacts to National Forest resources and management including fire, recreation, cultural, wildlife and threatened and endangered species.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by February 1995. At that time, EPA will publish a notice of availability of the draft EIS in the Federal Register. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the Federal Register.

The final EIS is expected to be completed by October 1995. In the final EIS, the Forest Service will respond to comments and responses received during the comment period on the draft EIS. The Responsible Official will decide which, if any, of the alternative will be implemented. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations in 36 CFR part 215.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cor. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: March 2, 1994.

William M. Lannan,

Forest Supervisor, Kaibab National Forest.

[FR Doc. 94–5236 Filed 3–7–94; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 5 p.m. on Wednesday, March 23, 1994, at the Charlotte-Mecklenburg government Center, room 270–271, 600 E. 4th Street in Charlotte, North Carolina 28202. The purpose of this meeting is: (1) To discuss the status of the Commission and SACs; (2) to hear reports on civil rights progress and/or problems in the State; (3) to discuss the current project on racial tensions in North Carolina; and, (4) to discuss racial tensions in the Charlotte community with representatives and leaders.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Asa Spaulding, Jr. at 919–380–0071 or Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 25, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–5191 Filed 3–7–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 3 p.m. on Wednesday, March 30, 1994 at the Red Lion Inn Seatac, 18740 Pacific Highway South, Seattle, Washington 98118. The purpose of the meeting is to review current civil rights developments in the State, and plan future project activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Bill Wassmuth or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 25, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–5192 Filed 3–7–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 6–94]

Foreign-Trade Zone 114; Peoria, IL Application for Subzone Status; Revere Ware Corporation Plant (Stainless/Aluminum Cookware) Clinton, IL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Economic Development Council for the Peoria Area, grantee of FTZ 114, Peoria, Illinois, requesting special-purpose subzone status for the stainless steel and aluminum household cookware manufacturing plant of the Revere Ware Corporation (Revere), located in Clinton, Illinois. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 15, 1994.

The Revere plant (800,000 sq.ft./48 acres/430 employees) is located at 1000 South Sherman Street in Clinton (Dewitt County), Illinois, some 55 miles southeast of Peoria. The facility is used to produce household cookware and bakeware (e.g., pots, pans, bowls). The production process involves cutting, shaping and coating raw stainless steel and aluminum with copper or non-stick compounds, polishing, and handle attachment. Material inputs purchased from abroad include stainless steel coils and circles and aluminum coils (duty rate range: 3.0%—10.1%), which represent some 25–50 percent of the finished products' material value.

Zone procedures would exempt Revere from Customs duty payments on the foreign materials used in export production. On its domestic sales, Revere would be able to choose the duty rates that apply to finished cookware (3.4%) for the foreign materials noted above. The application indicates that the savings from zone procedures would help the company improve the international competitiveness of the Illinois plant.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 9, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 23, 1994).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Greater Peoria Airport, 1900 S. Maxwell Road, Peoria, IL 61607.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

Dated: February 15, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–5185 Filed 3–7–94; 8:45 am]

BILLING CODE: 3510–DS–P

[Docket 7–94]

Foreign-Trade Subzone 59A; Lincoln, NE; Request for Expanded Manufacturing Authority; Kawasaki Motors Manufacturing Corporation, U.S.A., Plant (Industrial Robots)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Kawasaki Motors Manufacturing Corporation, U.S.A. (KMM), operator of FTZ Subzone 59A, KMM plant, Lincoln, Nebraska, requesting authority to manufacture industrial robots under zone procedures. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 24, 1994.

Subzone 59A was approved by the FTZ Board in 1980 with activity granted for the manufacture of motorcycles, jet skis, and four wheel all terrain vehicles (Board Order 163, 45 FR 58637, 9–4–80). An application for expansion of the subzone is currently pending (Doc. 56–93, 58 FR 63335, 12–1–93) and an application for authority to manufacture utility work trucks (Doc. 4–94, 59 FR 2592, 1–18–94).

KMM is now requesting subzone authority to manufacture certain automated industrial robots (6 axis) for the U.S. market and export. Foreign-sourced components and subassemblies comprise approximately 80 percent of the finished robots' material value and include: Plastic parts, rubber belts, fasteners, metal fittings, air pumps/compressors, data processing equipment, optical readers, valves and switches, electric motors and transformers, transmissions/gear boxes, controllers, diodes, transistors, semiconductors, liquid crystal devices, lasers, and measuring instruments (duty rate range: Free—20%). The application indicates that all steel mill products will be sourced domestically.

Zone procedures would exempt KMM from Customs duty payments on the foreign components used in export production. On its domestic sales, the company would be able to choose the duty rate that applies to the finished industrial robots (HTSUS# 8479.89.9049, duty rate 3.7%) for the foreign components noted above. The application indicates that the savings from zone procedures would help improve KMM's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 9, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 23, 1994).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 11133 "O" Street, Omaha, Nebraska 68137.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

Dated: February 24, 1994.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 94–5186 Filed 3–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 685]

Expansion of Foreign-Trade Zone 138 Franklin County, OH

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Rickenbacker Port Authority, grantee of Foreign-Trade Zone No. 138 (Columbus, Ohio area), for authority to expand its existing general-purpose zone at the Rickenbacker International Airport, Franklin County, Ohio, adjacent to the Columbus Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on June 24, 1993, (Docket 27–93, 58 FR 35427, 7/1/93);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that approval is in the public interest;

Now, Therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 23rd day of February 1994.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 94–5303 Filed 3–7–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–827]

Postponement of Preliminary Antidumping Duty Determination; Certain Cased Pencils from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: March 8, 1994.

FOR FURTHER INFORMATION CONTACT: Elizabeth Graham or Cynthia Thirumalai, Office of Countervailing Investigations, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4105 or 482–4087, respectively.

Postponement

We have determined this investigation to be extraordinarily complicated due to the large number of producers and resellers. We have also determined that respondent parties to the proceeding are cooperating in this investigation. Accordingly, pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended, ("the Act") and 19 CFR 353.15(b), we are postponing the date of the preliminary determination until no later than June 8, 1994.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: February 28, 1994.

Joseph Spetrini,

Assistant Secretary for Import Administration.

[FR Doc. 94–5304 Filed 3–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–822]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Class 150 Stainless Steel Threaded Pipe Fittings From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 5, 1994.

FOR FURTHER INFORMATION CONTACT: Michelle A. Frederick or David J. Goldberger, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0186 or 482–4136, respectively.

Preliminary Determination

We preliminarily determine that Class 150 stainless steel threaded pipe fittings (SST pipe fittings) from Taiwan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on August 23, 1993 (58 FR 45482, August 30, 1993), the following events have occurred: On September 16, 1993, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case.

In September and October 1993, the Department of Commerce (the Department) presented an antidumping duty questionnaire to Enlin Steel Corporation (Enlin), Ta Chen Stainless Pipe Co., Ltd. (Ta Chen), and Yih Tai Industries Co., Ltd. (Yih Tai), respectively. Enlin, Ta Chen, and Yih Tai accounted for at least 60 percent of the exports of the subject merchandise to the United States during the period of investigation (POI). In response to submissions regarding the reporting of certain product characteristics, the Department issued a revised appendix V of the antidumping duty questionnaire to the respondents in November 1993.

Enlin, Ta Chen, and Yih Tai submitted sales questionnaire responses in October and November 1993. The Department issued supplemental sales questionnaires in December 1993; the responses to these supplemental questionnaires were received in January 1994.

On December 2, 1993, petitioners in this investigation, Capital Manufacturing Company and Alloy Stainless Products Co., Inc. (petitioners), requested that the Department postpone the preliminary determination in accordance with section 733(c)(1) of the Act. We granted this request and postponed the date of the preliminary determination until not later than March 1, 1994, in accordance with 19 CFR 353.15(c) (58 FR 65577, December 15, 1993).

On December 16, 1993, in accordance with 19 CFR 353.31(c)(1)(i), petitioners filed a timely allegation of sales below the cost of production (COP). At the Department's request, petitioners filed a supplement to their COP allegation on January 12, 1994. During December 1993, and January 1994, we received comments from Enlin and Yih Tai objecting to the information contained in the petitioners' allegation.

On February 7, 1994, the Department issued a cost of production/constructed value (Section D) questionnaire to Enlin, Ta Chen, and Yih Tai, as the Department had reasonable grounds to believe or suspect that all three companies had sold SST pipe fittings in the home market or third-country at prices which were below their respective costs of production. On February 18, 1994, Yih Tai requested that the Department reconsider its decision to initiate a sales-below-cost investigation of Yih Tai's Canadian sales.

Because the Section D responses are not due until after the preliminary determination, we will address the issue of whether respondents were selling subject merchandise in the home market or third-country at below cost prices in our final determination.

Standing

On January 3, 1994, in accordance with 19 CFR 353.31(c)(2), Yih Tai filed a timely allegation that petitioners lack standing in this investigation. Under section 732(b)(1) of the Act, in order to have standing to file an antidumping petition, a petitioner must be an "interested party." Section 771(9)(C) of the Act defines the term "interested party," in relevant part, as "a manufacturer, producer, or wholesaler in the United States of the 'like product.'" Yih Tai has alleged that, based on the fact that petitioners only "finish" SST pipe fittings which are made from castings, the petitioners' activities are insufficient to qualify them as interested parties. However, petitioners have far more extensive production activities with respect to SST pipe fittings made through methods of manufacture other than casting. Given the Department's previous decision that all SST pipe fittings, whether finished or unfinished, and regardless of method of manufacture, constitute one category of such or similar merchandise, the Department concludes that petitioners qualify as interested parties (see September 29, 1993, Memorandum from David Binder to Richard W. Moreland). Therefore, petitioners have standing under section 732(b)(1) of the Act. We note that the ITC has found that the value that petitioners add to castings is sufficient

to qualify them as producers of the like product.

Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, Yih Tai and Enlin requested on February 10 and February 18, 1994, respectively, that, in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination to 135 days after the date of publication of the affirmative preliminary determination. Pursuant to 19 CFR 353.20(b), if exporters who account for a significant proportion of exports of the merchandise under investigation request an extension in the event of an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Based on U.S. import statistics, Yih Tai and Enlin both account for a significant portion of the POI exports of the subject merchandise.

Therefore, we are postponing the final determination for this investigation until the 135th day after the publication of this notice in the Federal Register.

Scope of the Investigation

The products covered by this investigation are Class 150 SST pipe fittings, defined as cast or forged stainless steel products used to connect pipe sections with an ability to withstand normal pressure service (150 pounds per square inch (psi) at 350 degrees Fahrenheit and 300 psi at –20 to 150 degrees Fahrenheit) as well as resistance to corrosion or extreme temperatures, or prevention of metallic contamination to materials in the system. Included in the scope of this investigation are both finished and unfinished Class 150 SST pipe fittings of any size. Unfinished Class 150 SST pipe fittings are defined as those products that have been advanced after casting or forging, but which require threading and machining to finish the fittings; finished Class 150 SST pipe fittings are defined as those products that have been formed in the shape of elbows, tees, reducers, etc. and have been further advanced after casting or forging, and require no further processing to be acceptable as a finished product to the end user. Class 150 SST pipe fittings are composed of alloys including, but not limited to, 304 and 316, and are manufactured in the shape of 90-degree elbows, 45-degree elbows, street elbows, tees, crosses, couplings, reducing couplings, half-couplings, caps, square head plugs, hex head plugs, hex bushings, unions, locknuts, and welding spuds. Excluded from the scope of investigation are SST pipe fittings manufactured in the shape of nipples.

The products under investigation are currently classifiable under subheadings 7307.19.9030, 7307.19.9060, 7307.19.9080, 7307.22.1000, 7307.22.5000, and 7307.29.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

Period of Investigation

The period of investigation (POI) is January 1 through June 30, 1993.

Such or Similar Comparisons

We have determined that the products covered by this investigation constitute a single category of such or similar merchandise. All three respondents reported that they sold merchandise in the home market or third-country market identical to that sold in the United States. Accordingly, none provided difference in merchandise (difmer) information in their sales listings. For a small number of U.S. sales reported by Enlin, however, our examination of the questionnaire response indicated that identical matches did not exist. Because Enlin did not report difmer information, we were precluded from identifying similar merchandise for comparison with these sales under section 771(16) (B) or (C) of the Act. Therefore, in accordance with section 776(c) of the Act, we applied best information available (BIA) in determining the margins for these sales. As BIA, in accordance with normal practice, we applied the higher of either (1) the average of all margins alleged in the petition for the class or kind of merchandise, or (2) the highest non-aberrational calculated margin for any other sale of merchandise of the same class of kind made by the Department in this investigation. (See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from France, 58 FR 37131, July 9, 1993.) We determined the highest non-aberrational calculated margin by selecting the highest margin, after excluding those margins which were substantially higher than the vast majority of other margins calculated.

Fair Value Comparisons

To determine whether sales of the respondents to the United States were made at less than fair value (LTFV), we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For each respondent, we based USP on purchase price, in accordance with section 772(b) of the Act, when the subject merchandise was sold to unrelated purchasers in the United States prior to importation. In addition, for Ta Chen, where certain sales to the first unrelated purchaser took place after importation into the United States, we also based USP on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

We made company-specific adjustments as follows:

A. Enlin

For Enlin, we calculated purchase price based on CIF or C&F prices to unrelated customers in the United States. In accordance with section 772(d)(1)(B) of the Act, we increased U.S. price by the amount of import duties imposed by Taiwan on inputs for the subject merchandise which have not been collected by reason of the exportation of the subject merchandise to the United States.

B. Ta Chen

For Ta Chen, we calculated purchase price based on FOB Taiwan, FOB U.S. port or delivered prices to unrelated customers in the United States. We calculated ESP based on delivered prices to unrelated customers in the United States. For ESP transactions, we made deductions, where appropriate, for the following movement charges in accordance with section 772(e) of the Act: foreign inland freight, ocean freight, marine insurance, foreign brokerage, U.S. customs fees, U.S. customs broker charge, containerization expense, harbor construction fees and U.S. inland freight. We also made deductions, where appropriate, for credit expenses, bank charges, and indirect selling expenses, including inventory carrying expenses and repacking in the United States.

We made an addition to USP for value-added taxes (VAT) in accordance with section 772(d)(1)(C) of the Act. In making our adjustment for VAT, we followed the instructions of the United States Court of International Trade (CIT) in *Federal Mogul Corp.* v. *United States*, 834 F.Supp. 1391 (CIT 1993). We also deducted the amount of tax due solely to price deductions in the original tax base. For discussion of this adjustment see Final Results of Administrative

Review: Certain Industrial Forklifts from Japan, (59 FR 1374, January 10, 1994) and Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from France, (58 FR 68865, December 29, 1993).

C. Yih Tai

For Yih Tai, we calculated purchase price based on CIF prices to unrelated customers in the United States. No deductions were either claimed or made.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, for each respondent we compared the volume of home market sales of the subject merchandise to the volume of third-country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. We found that the home market was not viable for sales of SST pipe fittings made by either Enlin or Yih Tai. Based on their respective questionnaire responses, Canada was selected as the third-country market basis for FMV for both Enlin and Yih Tai. We found that the home market was viable for sales of SST pipe fittings by Ta Chen.

We made company-specific adjustments as follows:

A. Enlin

We calculated FMV based on CIF or FOB prices, inclusive of packing, to unrelated customers in Canada. Enlin reported that all Canadian sales were made at the same level of trade as that of its U.S. customers. Pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and letter of credit fees. We also made circumstance-of-sale adjustments for the following movement expenses: Foreign inland freight, ocean freight, marine/air insurance, foreign brokerage and handling, and harbor construction fees. We deducted home market packing costs and added U.S. packing costs.

We added the amount of import duties imposed by Taiwan on inputs for the subject merchandise which have not been collected by reason of the exportation of the subject merchandise to Canada. Because Enlin did not include the per-unit amount of these uncollected duties in its sales listing, we added to FMV the amount reported for the U.S. comparison sale as best information available.

For both U.S. and third-country sales, we recalculated the imputed credit expenses for those sales that had missing payment and/or shipment dates. These recalculations were made based on the weighted-average difference between payment and shipment dates for those sales which were both shipped and paid during the POI.

B. Ta Chen

We based FMV on home market, ex-factory and delivered prices, inclusive of packing, to unrelated customers. We included in FMV the amount of the VAT included in the home market. As discussed for USP, we also calculated the amount of tax that was due solely to the inclusion of price deductions in the original tax base (in this case, five percent of the sum of any adjustments, expenses, and charges that were deducted from the tax base). We deducted this amount from the FMV after all other additions and deductions had been made. By making this additional tax adjustment, we avoid a distortion that could cause the creation of a dumping margin even where pre-tax dumping is zero.

We compared U.S. sales to home market sales made at the same level of trade, where possible, in accordance with 19 CFR 353.58. Where we were not able to match at the same level of trade, we made comparisons without regard to level of trade.

For purchase price comparisons, we made deductions, where appropriate, for discounts. Pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and bank charges. We also made circumstance-of-sale adjustments for the following movement expenses: Foreign inland freight, ocean freight, marine insurance, foreign brokerage, U.S. customs fees, U.S. customs broker charge, containerization expenses, and harbor construction fees. We deducted home market packing costs and added U.S. packing costs.

For ESP comparisons, we made deductions, where appropriate, for discounts and foreign inland freight. We also deducted from FMV the weighted-average home market indirect selling expenses, including, where appropriate, inventory carrying costs. The deduction for home market indirect selling expenses was capped by the sum of U.S. indirect selling expenses, in accordance with 19 CFR 353.56(b) (1) and (2).

For both U.S. and home market sales, we made the following recalculations to circumstance-of-sale adjustments: We recalculated credit expenses because the expenses reported in Ta Chen's sales listing were inconsistent with the methodology explained in the narrative portion of its submissions. We recalculated indirect selling expenses to include selling expenses not originally included in the sales listing. Finally, we recalculated inventory carrying expenses to correct the price bases, interest rates, and the appropriate time in inventory, based on information contained in Ta Chen's questionnaire responses.

C. Yih Tai

We calculated FMV based on CIF prices, inclusive of packing, to unrelated customers in Canada. Yih Tai reported that all Canadian sales were made at the same level of trade as that of its U.S. customers.

Pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for difference in credit expenses, letter of credit fees, and interest revenue. We also made circumstance-of-sale adjustments for the following movement expenses: Foreign inland freight, foreign brokerage, ocean freight, marine insurance, and harbor construction fees. We deducted home market packing costs and added U.S. packing costs.

Because commissions were paid on Canadian but not on U.S. sales, in accordance with 19 CFR 353.56(b)(1), we deducted the weighted-average third-country commission amount from FMV. We then added to FMV as a circumstance-of-sale adjustment the lesser of either (1) the amount of the weighted-average commissions paid on third-country sales; or (2) the sum of the indirect selling expenses on U.S. sales. U.S. indirect selling expenses included inventory carrying expenses.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of SST pipe fittings from Taiwan, except those of Ta Chen and Yih Tai, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the

estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The LTFV margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Enlin Steel Corporation	1.25
Ta Chen Stainless Pipe Co., Ltd.	0.00 (*de minimis*)
Yih Tai Industries Co., Ltd	0.15 (*de minimis*)
All Others	1.25

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

A hearing, if requested, will be held on June 16, 1994, at 1 p.m. at the U.S. Department of Commerce in room 3708. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than June 7, 1994, and rebuttal briefs no later than June 14, 1994. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination not later than 135 days after the publication of this notice.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: March 1, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5305 Filed 3–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–508–604]

Industrial Phosphoric Acid From Israel; Preliminary Results and Termination in Part of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results and termination in part of antidumping duty administrative reviews.

SUMMARY: In response to requests by the petitioners, the Department of Commerce is conducting administrative reviews of the antidumping duty order on industrial phosphoric acid from Israel. The review of Rotem Fertilizers, Ltd. (Rotem) is being terminated following the Department's determination in the final results of the changed circumstances review that Rotem is successor to Negev Phosphates Ltd. (Negev), a company that was revoked from the antidumping duty order. Thus, Rotem is no longer covered by the antidumping duty order since Negev's revocation has been applied to Rotem. See Industrial Phosphoric Acid from Israel; Final Results of Antidumping Duty Changed Circumstances Review; (59 FR 6944; February 14, 1994). These reviews cover one manufacturer/exporter of this merchandise to the United States, and the periods August 1, 1991 through July 31, 1992 and August 1, 1992 through July 31, 1993.

The company under review, Haifa Chemicals (Haifa), did not have shipments to the United States during the review period.

Therefore, we are using the rate found for this company in the last administrative review for cash deposit purposes. We preliminarily determine the dumping margin to be 6.82 percent *ad valorem*, the rate determined for this company in the previous administrative review of this order. See Industrial Phosphoric Acid from Israel; Final Results of Antidumping Duty Administrative Review, (57 FR 38471; August 25, 1992).

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 8, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1992 and August 3, 1993, the Department of Commerce (the Department) published in the Federal Register notices of "Opportunity to Request Administrative Review" (57 FR 36063 and 58 FR 41239) of the antidumping duty order on industrial phosphoric acid from Israel (52 FR 31057, August 19, 1987) for the August 1, 1991 through July 31, 1992 and August 1, 1992 through July 31, 1993, fifth and sixth review periods, respectively. FMC Corporation and Monsanto Company, the petitioners, requested administrative reviews covering the fifth review period on August 28, 1992 and the sixth review period on August 12, 1993. We initiated the fifth review on September 28, 1992 (57 FR 44551) and the sixth review on September 30, 1993 (58 FR 51053). The Department is now conducting these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by these reviews are shipments of industrial phosphoric acid (IPA). This merchandise is currently classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Haifa Chemicals, Ltd., an Israeli manufacturer/exporter to the United States of IPA, and sales to the United States during the periods August 1, 1991 through July 31, 1992 and August 1, 1992 through July 31, 1993. We are terminating the review as to Rotem Fertilizers, (Rotem) because, subsequent to the initiations of these reviews, Rotem was determined to be the successor to Negev (59 FR 6944; February 15, 1994), a company that was revoked from the antidumping duty order on March 23, 1992 (56 FR 10008). Accordingly, Negev's revocation has been applied to Rotem.

Haifa reported that it did not have any shipments of the subject merchandise to the United States during the review periods. We subsequently confirmed with the United States Customs Service that there were no entries of this merchandise to the United States by Haifa during these review periods. Therefore, we used the rate found in the previous review of this company for cash deposit purposes. Because Haifa did not respond to the Department's questionnaire in that review, it was assigned a rate of 6.82 percent, the

highest margin for a company under the order.

Preliminary Results of Review

We preliminarily determine that the following margin exists for the periods August 1, 1991 through July 31, 1992 and August 1, 1992 through July 31, 1993:

Manufacturer/exporter	Margin (percent)
Haifa Chemicals	6.82

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Israel entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies which remain subject to the order will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final determination covering the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer, is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent review period or the original investigation; and (4) the "all other" rate will remain at 1.77 percent as established in the final notice of the original investigation of this case.

On May 25, 1993, the Court of International Trade in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all other" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions it is appropriate to apply the "all others" rate from the original investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed antidumping duty orders for the purposes of establishing cash deposits in all current and future adminstrative reviews. The "all others" rate in the original investigation was 1.77 percent.

These deposit requirements, when imposed, shall remain in effect until the publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated February 28, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5306 Filed 3–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–601]

Stainless Steel Cooking Ware From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 27, 1993, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea. The review covers one manufacturer/exporter of this merchandise to the United States and the period January 1, 1990 through December 31, 1990. We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner. Based on our analysis of these comments, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: March 8, 1994.

FOR FURTHER INFORMATION CONTACT: Debra Crumbie or Michael J. Heaney, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1993, the Department published in the **Federal Register** (58 FR 50347) the preliminary results of the administrative review of certain stainless steel cooking ware from the Republic of Korea (52 FR 2139, January 20, 1987). The Department has now completed the review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The products covered by this administrative review are certain stainless steel cooking ware from the republic of Korea. During the review period, such merchandise was classifiable under Harmonized Tariff Schedule (HTS) item number 7323.93.00. The products covered by this order are skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless

steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope is stainless steel kitchen ware. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage. The review covers Namil Metal Company, Ltd. (Namil), and the period January 1, 1990 through December 31, 1990 (POR).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from the petitioner, Farberware, Inc. (Farberware).

Comment 1: Farberware states that, in the computer program for the preliminary results, the Department incorrectly adjusted for differences in the physical characteristics of similar third-country and U.S. products by subtracting total cost of manufacturing for third-country merchandise, expressed in the computer program as "TDCOM," from the cost of manufacturing for U.S. products, expressed in the computer program as "USCOM," to determine the difference in merchandise (DIFMER) adjustment. Farberware maintains that TDCOM and USCOM include both variable and non-variable manufacturing costs for third-country and U.S. merchandise, respectively.

Farberware argues that the Department should, in accordance with its established practice, revise the preliminary results computer program to compare third-country variable cost of manufacturing, expressed in the computer program as "TDVARCOM," to U.S. variable cost of manufacturing, expressed in the computer program as "USVARCOM".

Department's Position: We agree with Farberware. As is consistent with our practice, we based our adjustment for the DIFMER on the differences in variable cost of manufacture (COM) between similar third-country and U.S. products.

Comment 2: Farberware argues that the DIFMER adjustment was very substantial for many third-country comparison models. Farberware asserts that even after the Department changes the computer instructions to calculate the DIFMER using variable COM rather than total COM, many of the DIFMER adjustments may be in excess of 20 percent of the total COM of the U.S. merchandise being compared.

In addition to limiting the DIFMER adjustment to differences in the variable cost of manufacture, Farberware urges the Department to adhere to its general practice and to use constructed value (CV) as the basis for determining foreign market value (FMV) for those comparisons in which the DIFMER adjustment exceeds 20 percent of the total COM of the U.S. merchandise being compared.

Department's Position: We agree with Farberware. Where the difference in variable COM between a third-country model and a U.S. model exceed 20 percent of the total COM of the U.S. merchandise, in our final results, we used CV as the basis for FMV.

Comment 3: Farberware maintains that the Department's choice of the best information available (BIA) in the preliminary results of review is inappropriate. (The Department used the highest rate from a previous review as BIA to calculate margins for sales for which Namil provided no model-match or CV data. As BIA, the Department used the dumping margin of 1.69 percent as was established in the administrative review of Namil's sales which covered the period January 1, 1989 through December 31, 1989.)

Farberware maintains that the Department asked Namil in a supplemental questionnaire regarding sales during the period of review to provide similar third-country matches for all sales to the United States, and to provide CV data for United States sales for which there were no similar matches. Because Namil failed to provide a revised computer tape product concordance file and failed to provide the requested CV data, Farberware suggests that the Department use as BIA the highest margin the Department calculates for any U.S. sale for Namil in the final margin calculation of this administrative review.

Thus, Farberware argues that the Department should apply the highest margin calculated for any U.S. sale by Namil to the total net value of all sales to the United States of those U.S. transactions for which there was no model match or CV information.

Department's Position: We agree with Farberware that BIA should be applied to those sales for which no model match or CV information has been provided by Namil. However, we maintain that the Department's choice of BIA in the preliminary results of administrative review was appropriate.

In accordance with section 776(c) of the Tariff Act, we use BIA in cases where a party refuses or is unable to produce information requested in a timely manner and in the form required. In cases where a firm is deemed cooperative, but fails to supply certain FMV information (*e.g.*, corresponding home market sales within the contemporaneous period or constructed value data for a few U.S. sales), we apply a BIA rate to the particular U.S. transactions involved. In such situations, we use as BIA the higher of (1) the highest rate ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review, or if the firm has never been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al, Final Results of Antidumping Duty Administrative Review, 58 FR 39729, 39739 July 26, 1993).

Namil responded to our questionnaire. Namil, however, failed to provide either (1) such or similar third-country matches or (2) constructed value information for some of its U.S. sales during the period of review. Since Namil attempted to cooperate, we applied a rate of 1.69 percent, the highest rate ever applicable to Namil for the subject merchandise (See Certain Stainless Steel Cooking Ware from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 56 FR 38114, August 12, 1991), to U.S. sales for which Namil failed to give either model-match or CV information.

Comment 4: Farberware disagrees with the Department's preliminary decision to exclude from its analysis those U.S. sales for which Namil submitted a gross price of zero. Farberware further states that Namil never explained why these sales had a gross price of zero.

Farberware maintains that the zero gross price has never been shown to represent anything other than the actual price charged for these U.S. sales. Thus, Farberware argues that the Department should include all reported U.S. sales with a gross price of zero in the calculation of Namil's dumping margin in the final results of review.

Department's Position: We agree with Farberware and have included these sales in our calculations.

Comment 5: Farberware argues that the Department treated U.S. direct selling expenses, expressed as "DIRECTP" in the computer program, incorrectly by deducting DIRECTP from FMV instead of adding it to FMV.

Farberware states that the Department's standard practice in purchase price comparisons is to add U.S. direct selling expenses to FMV.

Department's Position: We agree with Farberware. The revised computer program instructions have corrected this clerical error. In these final results, we added U.S. circumstance-of-sale adjustments to FMV, as is our standard practice in purchase price comparisons.

Comment 6: Farberware maintains that the Department failed to deduct the direct selling expenses of "letter of credit advice." expressed as "LCADV"in the computer program, and "marine insurance expense," expressed as "MARINST" in the computer program, from the net prices used in the sales below cost test. Farberware states that such a deduction should be made because the selling, general, and administrative expenses reported by Namil and included in our sales below cost test were net of all direct selling expenses.

Department's Position: We agree with Farberware. In our final results, we have deducted letter of credit and marine insurance expenses from the net prices used in the sales below cost test.

Final Results of Review

As a result of our review, we have determined that a dumping margin exists for the period as follows:

Manufacturer/exporter	Time period	Margin (percent)
Namil Metal Co., Ltd	1/1/90–12/31/90	1.06

The Department shall instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between the United States price and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or with drawn from warehouse, for consumption, as provided for by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rate for the reviewed company will be the rate determined above;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rates will be the "all others" rate established in the LTFV investigation, as discussed below.

On May 25, 1993, the United States Court of International Trade (CIT), in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once a company is assigned an "all others" rate, that rate can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the "all others" rate from the LTFV investigation (or that rate as amended for the correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 8.10 percent, the "all others" rate established in the final notice of the LTFV investigation by the Department (52 FR 2139, January 20, 1987).

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping and export subsidization." This provision is implemented by section 772(d)(1)(D) of the Tariff Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, we will instruct the Customs Service to subtract the level of export subsidies as determined in Certain Stainless Steel Cooking Ware from the Republic of Korea; Countervailing Duty Order, 52 FR 2140 (January 20, 1987), which is 0.78 percent *ad volorem*, from the dumping margin for assessment and cash deposit purposes. There have been no reviews conducted since the publication of the countervailing duty order.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice is in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 28, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5184 Filed 3–7–94; 8:45 am]

BILLING CODE 3510–DS–P–M

[C–301–601]

Miniature Carnations From Colombia; Final Results of Countervailing Duty Administrative Review and Determination Not To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On October 7, 1993, the Department of Commerce ("the Department") published the preliminary results of its administrative review and intent not to terminate the suspended countervailing duty investigation on miniature carnations from Colombia. The review covers the period January 1, 1988 through December 31, 1990 and seven programs. On January 31, 1991, the Government of Colombia ("GOC") requested termination of the suspended investigation based on abolishment of the programs for a period of at least three years, in accordance with 19 CFR 355.25(a)(1) and 355.25(b)(1). Therefore, we examined the programs to determine if each program had been abolished for a period of at least three consecutive years. We gave interested parties an opportunity to comment on the preliminary results. After reviewing all

the comments received, we determine that the GOC and producer/exporters of miniature carnations have complied with the terms of the suspension agreement. However, we also determine that the GOC has not abolished each program for a period of at least three consecutive years. Therefore, we determine that the GOC has not met all the requirements for termination of the countervailing duty suspended investigation on miniature carnations as outlined in the Commerce Regulations.

For the purpose of revoking a countervailing duty order or terminating a suspended countervailing duty investigation based on three consecutive years of elimination of all subsidies pursuant to 19 CFR 355.25(a)(1), it is the Department of Commerce's current policy that administrative reviews must be requested and conducted for each of the three consecutive years. See Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, to Alan M. Dunn, Assistant Secretary for Import Administration, of December 14, 1992, which fully describes this issue. However, the request for termination in this case predates the above policy, and we nevertheless have examined a three-year period in order to determine whether termination is appropriate. We invited interested parties to comment on these results.

EFFECTIVE DATE: March 8, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques or Jeanene Lairo, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–3434 or (202) 482–2243, respectively

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1993, the Department published in the **Federal Register** the preliminary results of its countervailing duty administrative review and intent not to terminate the suspended investigation on miniature carnations from Colombia (58 FR 52269). (See Suspension of Countervailing Duty Investigation; Miniature Carnations from Colombia, 52 FR 1353 (January 13, 1987).) We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope and Review

Imports covered by this review are shipments of miniature carnations from Colombia. During the review period, the merchandise covered by this suspension agreement is classified under Harmonized Tariff Schedule ("HTS") item numbers 0603.10.30. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The period of review ("POR") covers January 1, 1988 through December 31, 1990, and seven programs: (1) Tax Reimbursement (Certificate Program Certificado de Reembolso Tributario (CERT program)); (2) The Fund for the Promotion of Export Loans (working and fixed-capital) ("PROEXPO"); (3) Plan Vallejo; (4) Free Industrial Zones; (5) Export Credit Insurance; (6) Countertrade; and (7) Research and Development.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. Also, at the request of the petitioner, the Floral Trade Council ("FTC") and the GOC, we held a public hearing on December 3, 1993. Comments 1 through 10 also pertain to the Final Results of Countervailing Duty Administrative Review and Intent not to Terminate Suspended Investigation; Roses and Other Cut Flowers from Colombia which is being published concurrently with this notice.

Comment 1. The FTC alleges that the GOC has not abolished certain programs covered under the suspended investigations for a period of three consecutive years as required under 19 CFR 355.25(a)(1)(i). The FTC asserts that elimination of Colombian flower exporters' eligibility to receive countervailable subsidies on exports of fresh cut flowers to the United States is insufficient grounds for termination. The FTC also contends that the regulation permits the Department to terminate only when the government has abolished all programs benefitting the merchandise, not merely the eligibility of exports of a particular category of merchandise. Finally, the FTC argues that the Department should consider the entire program in deciding whether to terminate the suspended investigation.

The GOC asserts that the Department's preliminary determination was erroneous for several reasons. First, the GOC contends that if the program remains in existence but has been abolished for the subject merchandise, termination is required. In the case of the CERT program, the GOC asserts that the Department correctly focused on whether or not the subject merchandise remains eligible to receive benefits under the subsidy programs found countervailable. Thus, the GOC asserts that the Department failed to consistently apply the correct legal standard for program abolition in its analysis of PROEXPO, Plan Vallejo, and the air freight rates program, since the subsidy programs have been abolished with regard to the subject merchandise and there is no likelihood the countervailable programs will be reinstated or new programs substituted. (See Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement, 51 FR 44930 (December 15, 1986).)

Department's Position: The Department's regulations at 19 CFR 355.25(a)(1)(i) state that the Secretary may terminate a suspended investigation if the Secretary concludes that "the Government of the affected country has eliminated all subsidies on the merchandise by abolishing for the merchandise, for a period of at least three consecutive years, all programs that the Secretary has found countervailable." A program is effectively abolished when the government of the affected country has eliminated, by law, the eligibility of producer/exporters of the subject merchandise for the countervailable program. The regulation does not require that a program be abolished for merchandise other than subject merchandise in order for the Department to terminate the suspended investigations under this provision.

In the case of CERT, Decree 107, issued by the GOC in January 1987, set the level of CERT payments at zero for exports of the subject merchandise to the United States. Because, as a matter of law, the GOC has made the producer/exporters ineligible for any benefits on the subject merchandise by setting their CERT rate to zero, for a period of three consecutive years, we determine that the program has been abolished for three years.

In the case of PROEXPO, the program has not been abolished for the subject merchandise since flower exporters are eligible to receive loans for exports to the United States which may or may not be at preferential rates, although they did not receive preferential PROEXPO loans during the POR. (See Comment 8, below). For Plan Vallejo, the program has not been abolished for the subject merchandise for a period of three consecutive years because the GOC did not eliminate eligibility for the subject merchandise by law until April 1991. (See Comment 9, below.) Because the GOC failed to meet the abolition standard in 19 CFR 355.25(a)(1)(i) for Plan Vallejo and PROEXPO, we will not terminate the suspended investigations.

Comment 2: The FTC contends that the Department verified that, although, "in 1988, the Central Bank made no CERT payments for shipments of the subject merchandise, * * * there were applications for CERT payments in 1988." The FTC contends that the verification report does not indicate whether signatories to the suspension agreements submitted these applications. Consequently, the FTC alleges that this is a possible *prima facie* breach of the suspension agreements and should result in a finding of non-compliance.

The GOC contends that in addition to flowers being ineligible to receive any subsidies under the CERT program during the POR, no flower grower or exporter received CERT rebates on the subject merchandise.

Department's Position: We disagree with the petitioner. At verification, the Department determined that none of the companies examined had used the CERT program during the POR. We have already found that for the roses and other cut flowers agreement producer/exporters were in compliance during the 1988 period and that for the miniature carnations agreement producer/exporters were in compliance during the 1988 and 1989 periods.

While applications from a few producer/exporters did occur, the companies applying constituted an insignificant portion of the subject companies. In 1988, only seven out of approximately 400 flower companies applied for CERT payments. The number of companies applying for CERT benefits in 1989 and 1990 were two and five respectively. (See verification exhibits C–6, C–7, C–13, and C–21.) Moreover, we have verified that no countervailable benefits were received under CERT, despite any applications made. Although applications for CERT benefits are technically inconsistent with the suspension agreements, the Department considers these acts inconsequential as specified under 19 CFR 355.19(d). Consequently, for the purposes of the final results, we determine that the signatories were in compliance with the suspension agreements during the POR.

Comment 3: FTC asserts that two signatories may have received CERT rebates on U.S. flower exports. FTC contends that the questionnaire responses in the 1990–91 administrative review of the antidumping duty order indicate that two Colombian signatories to the suspension agreements, Flores de la Sabana ("Sabana") and Las Amalias, S.A. ("LASA") may have received CERT rebates for U.S. exports.

FTC asserts that in its constructed value questionnaire response, Sabana stated that its internal sales taxes are not included in the cost of materials because the GOC refunds those taxes because the final product is sold outside of the country. Petitioner states that Sabana also submitted in a supplemental response a page of its bookkeeping records for the month of April 1990 that included the line item "CERTs."

Petitioner also contends that LASA reported that it was "entitled to a rebate for value added tax * * * paid to suppliers and contractors for installations for flowers that are exported. During the period of review, LASA received rebates * * *" FTC claims that according to LASA, "the rebates cover all products exported." Finally, FTC states that LASA's public version of its consolidated balance sheet dated December 31, 1990 includes the line item "CERTs."

The GOC asserts that no CERT rebates were paid with respect to exports of subject merchandise. The GOC notes that its questionnaire responses and the Department's verification report indicate that no subject merchandise received CERT payments.

The GOC contends that the documents indicate that two producers received refund or exemption of value added tax paid on materials used in the production for exportation. In addition, the GOC states that refund of prior stage value added taxes are entirely permissible and non-countervailable. The GOC cites Countervailing Duties; Notice of Proposed Rulemaking, 19 CFR 355.44(i)(4)(i), F.R. 23366, 23369, 23380, 23382 (May 31, 1989) ("Proposed CVD Rules"); General Agreement on Tariffs and Trade ("GATT") Subsidies Code, item (h). Finally, the GOC claims that the FTC has failed to demonstrate any link between value added tax rebates and the CERT export certificate program.

The GOC asserts that the bookkeeping records of both companies cited by FTC—Sabana and Las Amalias—contain a line item entry for CERTs only because they received CERTs for their flower exports to third countries.

Department's Position: We disagree with petitioner and with respondent in part. The information described in petitioner's case brief pertains to the antidumping administrative review and would normally have been considered submitted untimely on the record of these reviews. However, because a substantial period of time has passed since the petitioner's January 1993 and August 1993 submissions on LASA and Sabana, we will consider petitioner's comments on this issue for these final results.

As we stated in our response to Comment 2, the Department verified that none of the signatories had used the CERT program for the subject merchandise during the POR. Petitioner's remarks concerning line items titled "CERT" in Sabana's consolidated balance sheet and rebates for exports are consistent with the fact that the program is still in effect for exports to third countries. However, the Department reviewed GOC documentation for all three years of the POR which indicated there were no countervailable CERT benefits given on exports of the subject merchandise to the United States and corroborated the GOC information at verification of three other companies. Consequently, for the purposes of the final results, we determine that the signatories were in compliance with the suspension agreements during the POR, and that we will not conduct any further investigations or verifications with regard to Sabana and LASA during this POR. (See also Comment 4, below.)

As to the GOC's claim that refunds of value-added taxes are entirely permissible and non-countervailable, the Department's position is that refund of prior stage value added taxes upon export are permissible and non-countervailable only to the extent such refund does not exceed the amount of prior stage indirect taxes levied on goods that are physically incorporated in the export product. (See § 355.44(i)(4)(i) of the Proposed CVD Rules.) In the present case, because CERT rates were set at zero, no taxes were refunded.

Comment 4: The FTC contends that the Department's verification of the CERT program for three Colombian producer/exporters was inconclusive. First, the FTC asserts that the Department failed to address how Agropecuria Cuernavaca listed export destinations based on the sales ledger if destination was not recorded. Furthermore, petitioner contends that the customers' identity are insufficient to indicate the final destination, where there are innumerable companies trading flowers on consignment.

Second, the FTC states that since Minispray was incorporated in 1989 and made its first sale in May 1990, it is hardly representative of the Colombian flower producer/exporters.

Third, the FTC claims that with respect to Floramerica, the Department should have investigated whether a CERT payment for the merchandise exported to Germany was actually for merchandise exported to the United

States. The FTC requests that the Department explain how it determined that the CERT payment was actually for a shipment to Germany, and not the United States. The FTC asserts that the GOC should have questioned the CERTs reported by Floramerica on its U.S. sales.

Finally, the FTC requests that the Department either (1) conduct a further investigation and verification or (2) presume that Colombian growers received CERT rebates on U.S. flower exports. In support of their argument the FTC cites *Federal-Mogul Corp.* v. *United States*, 17 CIT _____. Slip Op. 93–180 (Sept. 14, 1993); and *Freeport Minerals (Freeport-McMoran Inc.)* v. *United States*, 776 F.2d 1029, 1032–33 (Fed. Cir. 1985).

The GOC contends that the Department fully verified the non-receipt of CERT certificates on floral exports for the United States. Also, the GOC claims that its records showed no CERT payments being made to Floramerica with respect to its exports to the United States. The GOC asserts that a Floramerica internal worksheet erroneously listed a U.S. CERT payment which the company demonstrated to the Department verifiers was actually made for a shipment to Germany.

The GOC claims that the suspension agreements only obligate Colombian growers and exporters to renounce CERT benefits on shipments of the subject products exported, directly or indirectly, from Colombia to the United States and that the U.S. countervailing duty law generally concerns itself only with bounties or grants benefitting merchandise exported to the United States.

Department's Position: We agree with the respondent. The Department verified that producer/exporters of the subject merchandise did not receive any CERT payments. We were satisfied that the GOC's records and procedures meet their obligations under the suspension agreements to ensure that no benefits ensue to producer/exporters. At verification, from documentation provided by the GOC, we traced all CERT payments received by Agropecuria Cuernavaca during the POR to their exports of the merchandise to third countries. We verified that all CERT payments are recorded in an internal report which tracks CERT payments on a yearly basis and that no payments were for shipments of subject merchandise. We further verified that the GOC requires documentation that the shipment does not go to a country for which CERT payments are not available. In the case of Minispray, it was fully operating during the POR, thereby making the company a legitimate and representative Colombian flower producer and we verified it did not receive CERT payments for exports of the subject merchandise. In the case of Floramerica, we verified that the company received no CERT payments for exports of the subject merchandise during the POR. The Floramerica report indicating a CERT payment for a U.S. shipment was the result of a clerical error by the company. Based on an official GOC export document and other company documents reviewed during the Floramerica verification which included the destination and importer, we verified the shipment in question went to Germany and not to the United States. (See verification exhibit F–6). Finally, the Department will not conduct a further investigation or verification of the information the FTC submitted on LASA and Sabana. (See Comment 3, above.)

Comment 5: The FTC contends that the Department's verification reports revealed an inability on the part of the GOC to monitor compliance with the terms of the suspension agreements and the CERT program, in particular.

In addition, the FTC contends that the verification reports do not establish that the Central Bank or Customs collect information on the intermediate and ultimate destinations of exports. Therefore, the FTC argues that the GOC is unable to certify that CERT payments were made for shipments to third countries. In addition, the FTC asserts that since the documents are prepared by the exporters, they do not offer any objective support that CERT payments were made only for third-country exports. In support of their position, the petitioner cites *Asociacion Colombiana de Exportadores* v. *U.S.*, 704 F. Supp. 1114, 1117 (CIT 1989).

The GOC argues that the Department is not required to investigate unsupported allegations and that the GOC is under no obligation to disprove these allegations.

Department's Position: Contrary to petitioner's assertions, we have determined that the agreements have been effectively monitored by the GOC during the POR. During verification, the Department reviewed documentation provided by companies and by the Banco de la Republica, including applications and records of official government approval and disapproval for CERT payments listed by individual companies for exports to various countries during the POR. (See verification exhibits C–7, C–13, C–18, and C–21.) The Department also examined export manifests and other shipping documents to determine destinations of shipments receiving CERT rebates and verified that no shipments of subject merchandise received CERT rebates. The export manifests which indicated the country of destination for the merchandise matched documents verified at the companies. (See verification exhibit AC–3A.) Consequently, we determine that the GOC has adequately monitored the agreements and has provided the Department the relevant reports in accordance with the terms of the agreements.

Comment 6: The FTC contends that certain shipments received CERT rebates which may have been reshipped to the United States from the Netherlands Antilles and Panama. The FTC also questions the GOC's decision to reduce the CERT rebate rate for exports to the Netherlands Antilles and Panama to zero. Finally, the FTC questions whether shipments having received CERT payments actually traveled the entire distance to Canada and Europe, etc. as indicated on the export documentation. The FTC alleges that the Department did not confirm that third country exports receiving CERT payments were not actually unloaded at Miami port.

The GOC argues that the Department is not required to investigate unsupported allegations and that the GOC is under no obligation to disprove these allegations.

Department's Position: During verification, the Department examined export documents to determine destinations of shipments receiving CERT rebates and verified that no shipments of subject merchandise received CERT rebates. There is no evidence in the questionnaire response, in documentation reviewed by the Department at verification, or anywhere else on the record to support an allegation of transhipment through third countries or of unloading of flowers in the United States.

Comment 7: The FTC contends that the Department should determine that flower exports to the U.S. continue to benefit from CERT rebates on third country exports and that the CERT program still exists. Thus, the FTC contends that the benefit received benefits the whole company's production, including production exported to the United States. In support of their position, petitioner cites Certain Carbon Steel Products from Brazil; Final Affirmative Countervailing Duty Determinations, 49 FR 17988, 17996 (April 26, 1984); Final Determination of Sales at Less Than Fair Value: Silicon Metal from Brazil, 56 FR 26977, 26987 (June 12, 1991); and

British Steel Corp. v. *United States*, 605 F. Supp. 286, 293–95 (CIT 1985).

The GOC contends that the suspension agreements obligate signatories to renounce CERT payments "on shipments of the subject products exported, directly or indirectly, from Colombia to the United States." The GOC claims that Colombian producer/exporters are under no obligation to renounce CERT benefits to third countries.

The GOC further asserts that U.S. countervailing duty law generally concerns itself with only bounties or grants benefitting subject merchandise (i.e. merchandise shipped to the United States). In support of their claim, the GOC cites Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement, 51 FR 44930 (Dec. 15, 1986); Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review, 52 FR 48846, 48847–8 (Dec. 28, 1987); and Final Affirmative Countervailing Duty Determination; Miniature Carnations from Colombia, 52 FR 32033, 32036 (Aug. 25, 1987).

Finally, the GOC contends that by having export subsidies to third countries, there is an incentive for Colombian exporters to shift exports from the United States to third countries. Consequently, the GOC argues that flowers sold in the United States in no way benefit from CERT rebates.

Department's Position: As stated in the final results of the 1983–1985 administrative review of this case (Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review, 52 FR 48847 and 48848 (Comments 2 and 4)(December 28, 1987)), it is the Department's position that rebates tied to exports to third countries do not benefit the production or export of the subject merchandise. (See § 355.47(b) of the *Proposed CVD Rules*.) The Department has verified that Colombian exporters only received CERT payments based on exports to countries other than the United States. CERT payments benefit only those shipments to which they are tied, not shipments of subject merchandise. It is the Department's policy that we will not allocate benefits tied to a product not under investigation over a product under investigation unless we have a clear reason to believe that such a benefit encourages the production or export to the United States of the product under investigation. (See *Industrial Nitrocellulose From France; Final Results of Countervailing Duty Administrative Review*, 52 FR 833 (Comment 1)(January 9, 1987), and *Certain Fresh Cut Flowers From Israel; Final Affirmative Countervailing Duty Determination*, 52 FR 3316 (Comment 9)(February 3, 1987). We have no such evidence in this case. We determine, therefore, that the signatories have not violated the suspension agreements.

We disagree with the FTC that *Silicon Metal from Brazil* is germane to this review. The issue in that antidumping case involved the allocation of financing cost for new furnaces that could produce the subject merchandise. While it is true that money is fungible, subsidies on exports to third countries do not provide benefits to exports to the United States if the subsidies are tied to specific non-subject merchandise destined for third countries. The FTC's reliance on *Certain Carbon Steel Products from Brazil* is misplaced because in that case, although we found the IPI tax rebate was a subsidy benefitting all production including exports, we did not find that it was tied to specific exports to individual countries. In the case of CERT payments, we were able to determine that payments were clearly tied to particular countries.

Comment 8: FTC contends that the Department should compare the interest rates received on PROEXPO loans to commercial benchmark interest rates available on comparable loans during the POR. FTC also argues that the Department applied outdated benchmark interest rates, inconsistent with the Department's practice. In support of its position, FTC cites the *Proposed CVD Rules; Final Affirmative Countervailing Duty Determinations: Certain Steel Products From Belgium*, 58 FR 37273, 37288–89 (July 9, 1993); *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Germany*, 58 FR 37315, 37322–23 (July 9, 1993); *Oil Country Tubular Goods from Argentina—Preliminary Results of Countervailing Duty; Administrative Review*, 56 FR 50,855 (October 9, 1991); *Preliminary Affirmative Countervailing Duty Determination: Bulk Ibuprofen from India*, 56 FR 66432 (December 23, 1991); *Preliminary Affirmative Countervailing Duty Determination: Extruded Rubber Thread from Malaysia*, 56 FR 67276, 67277 (December 30, 1991); *Rice from Thailand; Preliminary Results of Countervailing Duty Administrative Review*, 57 FR 8437, 8439 (March 10, 1992); and *Alhambra Foundry* v. *United States*, 626 F. Supp. 402 (CIT 1985).

FTC argues that the Department should instead apply periodically reconstructed benchmarks that reflect, for short-term loans, comparable commercial financing on a nation-wide and non-sector specific basis and, for long-term loans, the firm's other commercial loans taken out in the same year or the national average interest rate. FTC asserts that if the Department were to apply benchmarks chosen in the 1989 miniature carnations review it is likely that certain Colombian producers/exporters received PROEXPO loans at preferential rates. (See *Asociacion Colombiana de Exportadores* v. *United States*, 704 F. Supp. 1114, 1122 (CIT 1989.) Furthermore, the FTC contends that the Department should apply effective, rather than nominal benchmark rates. Finally, the FTC argues that if "established benchmarks" rather than reconstructed benchmarks are used in the final results, the Department should use its established benchmark methodology to determine benchmarks for each of the 1988, 1989, and 1990 periods. FTC contends that the Department should confirm the primary source of financing by reviewing source documents.

The GOC contends that the signatories fully complied with the suspension agreements because during the POR it rendered flower growers ineligible for a countervailable PROEXPO benefit by setting the PROEXPO interest rates for flower growers not just at but above the benchmark interest rates established by the Department. In addition, the GOC asserts that the suspension agreements require their signatories not to renounce PROEXPO loans *per se*, but only to renounce the preferential interest rates. The GOC claims that, under the agreements, the Department establishes the benchmark interest rates, and that the agreements only obligate the renouncing producers and exporters to refinance existing loans and obtain new loans on non-preferential terms at or above the relevant benchmark interest rate determined by the Department. Thus, the GOC argues that continued receipt by flower growers of PROEXPO loans at the Department-established rates not only is permitted under the suspension agreements but is expressly contemplated.

The GOC also asserts that the Department erred because it defined "the program" at issue as all PROEXPO loans, including PROEXPO loans at non-preferential and thus non-countervailable rates.

The GOC contends the effect was that no flower grower could receive a PROEXPO loan at a preferential interest rate, irrespective of the destination to which it shipped its flowers, and even if it did not export at all. Consequently,

GOC asserts that the Department erred in its preliminary results of review because it appears to have defined "the program" at issue as all PROEXPO loans, including PROEXPO loans at non-preferential and thus non-countervailable rates.

Department's Position: The Department set the benchmark rates applicable to the POR in 1987. Although we determined on April 8, 1991 that the benchmark for PROEXPO should be changed, we stated that "any changes to short-term and long-term benchmark interest rates for this suspension agreement should be set prospectively." See Miniature Carnations from Colombia; Final Results of Countervailing Duty Administrative Review, 56 Fed. Reg. 14240 (April 8, 1991). Consequently, the Department cannot reset the benchmarks for these suspension agreements in the middle of an administrative review. Had the Department changed the benchmark interest rates during the POR it would have imposed undue burdens on the signatories to the suspension agreements to comply with the changed benchmark rates. Since suspension agreements are forward looking, the terms and conditions should not be retroactively changed during the POR.

At verification, the Department examined documentation that indicated that PROEXPO charged interest rates on its short- and long-term loans above the Department's established benchmark rates in effect during the POR. The Department also found that the companies received PROEXPO loans on terms consistent with the suspension agreements. Consequently, we have determined that signatories were in compliance with the terms of the suspension agreements for the PROEXPO program. Since PROEXPO loans were above the benchmark rates, the Department determines that the GOC did not confer any countervailable benefits through the PROEXPO program during the POR. The Department finds that signatories complied with the suspension agreements' benchmarks and avoided countervailable benefits during the POR, resulting in a situation analogous to non-use for the PROEXPO program by signatories.

However, the GOC has not abolished the PROEXPO program for the subject merchandise as required by 19 CFR 355.25(a)(1)(i). In the case of the CERT program, the GOC has changed the law to eliminate subsidies and would have to change the law again in order to confer any future countervailable benefits for the subject merchandise through the CERT program. In other words, the GOC would have to take a specific action in the future (e.g., passing a new law or repealing the old law) in order for any possible countervailable benefits to occur in the future. As the PROEXPO program is now structured, PROEXPO loans granted at interest rates at or above the current benchmarks could constitute countervailable subsidies if the commercial interest rate falls below the benchmark specified by the suspension agreements. In such a case, producer/exporters would be eligible for countervailable benefits under PROEXPO without the GOC taking specific action to change the program (as would be the case with the CERT program). Thus the GOC has failed to eliminate the subsidy by abolishing PROEXPO because loans under the program may in future constitute countervailable subsidies without further GOC action. Consequently, we determine that PROEXPO has not been abolished for the subject merchandise as required by 19 CFR 355.25(a)(1)(i), and the Department will not terminate the suspended investigations.

Comment 9: The GOC asserts that it rendered flower growers ineligible for any countervailable subsidy under the Plan Vallejo program for capital equipment. Consequently, the GOC asserts that it has satisfied the Department's requirement for abolishing programs "for the merchandise" found to confer countervailable benefits. The GOC contends that the Department's preliminary determination is not in accordance with law because it appears to require that Plan Vallejo as a whole be abolished rather than simply that it be abolished for the merchandise.

Department's Position: We disagree with the GOC. The GOC only formalized its policy of not providing subsidies on the subject merchandise by abolishing the Plan Vallejo program for the subject merchandise in April 1991, after the POR. At verification, the Department reviewed documentation that indicated that no flower producer/exporters received Plan Vallejo benefits for the subject merchandise during the POR. (See verification exhibits PV–4 and PV–5.) However, while producer/exporters did not receive any benefits under Plan Vallejo, they were eligible for benefits because the GOC had not changed its law to abolish the program. Consequently, we determine that the program has not been abolished for the subject merchandise for a period of three consecutive years as required by 19 CFR 355.25(a)(1)(i), and the Department will not terminate the suspended investigations.

Comment 10: The GOC argues that because they have not only met their obligations under side letters provided in connection with the suspension agreements, but have also exceeded them by taking steps to reduce, phase out, or eliminate the programs as a whole, there is no likelihood that countervailable subsidies will be substituted or replaced. To support their arguments petitioner cites the following: 19 CFR 355.25(a)(1); *Manufacturas Industriales de Nogales, S.A.* v. *United States*, 666 F. Supp. 1562 (CIT 1987); and Leather Wearing Apparel from Mexico; Final Results of Administrative Review of Countervailing Duty Order, 50 FR 6024 (February 13, 1985).

The FTC claims that the existence of potentially countervailable subsidies increases the likelihood of the reactivation of the programs or their substitution with other countervailable programs after termination. In the case of CERT, the GOC may simply issue another decree to change the CERT rate on the subject merchandise. As for PROEXPO, the FTC asserts that the Department's review cannot establish the likelihood of PROEXPO's reinstatement or substitution after termination.

Department's Position: Because we have found that the Plan Vallejo and PROEXPO programs have not been abolished during the POR, the conditions of 19 CFR 355.25(a)(1)(i) have not been met, and we will not terminate the suspension agreements. Therefore, it is unnecessary for us to address the question of the likelihood of benefits resuming.

Final Results of Review

After considering all of the comments received, we determine that the signatories have complied with the terms of the suspension agreement for the period January 1, 1988 through December 31, 1990. However, we will not terminate the suspension agreement. In order for us to terminate the suspension agreement the GOC must have abolished all programs for a period of three consecutive years which is not the case with Plan Vallejo and PROEXPO.

This administrative review and notice are in accordance with sections 751(a)(1)(C) of the Tariff Act (19 U.S.C. 1675(a)(1)(C)) and 19 CFR 355.22 and 355.25.

Dated: March 1, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5307 Filed 3–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–301–003]

Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Determination Not To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On October 7, 1993, the Department of Commerce ("the Department") published the preliminary results of its administrative review and intent not to terminate the suspended countervailing duty investigation on roses and other cut flowers from Colombia. The review covers the period January 1, 1988 through December 31, 1990 and eight programs. On January 31, 1991, the Government of Colombia ("GOC") requested termination of the suspended investigation based on abolishment of the programs for a period of at least three consecutive years, in accordance with 19 CFR 355.25(a)(1) and 355.25(b)(1). Therefore, we examined the programs to determine if each program had been abolished for a period of at least three consecutive years. We gave interested parties an opportunity to comment on the preliminary results. After reviewing all the comments received, we determine that the GOC and the producer/exporters of roses and other cut flowers have complied with the terms of the suspension agreement. However, we also determine that the GOC has not abolished each program for a period of at least three consecutive years. Therefore, we determine that the GOC has not met all the requirements for termination of the countervailing duty suspended investigation on roses and other cut flowers as outlined in the Commerce Regulations.

For the purpose of revoking a countervailing duty order or terminating a suspending countervailing duty investigation based on three consecutive years of elimination of all subsidies pursuant to 19 CFR 355.25(a)(1), it is the Department of Commerce's current policy that administrative reviews must be requested and conducted for each of the three consecutive years. See Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, to Alan M. Dunn, Assistant Secretary for Import Administration, of December 14, 1992, which fully describes this issue. However, the request for termination in this case predates the above policy. Therefore, although no review was requested for 1989, we nevertheless have examined a three-year period in order to determine whether termination is appropriate. We invited interested parties to comment on these results.

EFFECTIVE DATE: March 8, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques or Jeanene Lairo, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–3434 or (202) 482–2243, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1993, the Department published in the **Federal Register** the preliminary results of its countervailing duty administrative review and intent not to terminate the suspended investigation on roses and other cut flowers from Colombia (58 FR 52272). (See Roses and Other Cut Flowers From Colombia; Suspension of Investigation, 48 FR 2158 (January 18, 1983); and Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review and Revised Suspension Agreement, 51 FR 44930 (December 15, 1986).) We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope and Review

Imports covered by this review are shipments of roses and other cut flowers from Colombia. During the review period, the merchandise covered by this suspension agreement is classified under Harmonized Tariff Schedule ("HTS") item numbers 0603.10.60, 0603.10.70, 0603.10.80, and 0603.90.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The period of review ("POR") covers January 1, 1988 through December 31, 1990, and eight programs: (1) Tax Reimbursement Certificate Program (Certificate Program Certificado de Reembolso Tributario ("CERT" program)); (2) The Fund for the Promotion of Export Loans (working and fixed-capital) ("PROEXPO"); (3) Plan Vallejo; (4) Air Freight Rates; (5) Free Industrial Zones; (6) Export Credit Insurance; (7) Countertrade; and (8) Research and Development.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. Also, at the request of the petitioner, the Floral Trade Council ("FTC"), and the GOC, we held a public hearing on December 3, 1993. Several issues raised by interested parties in this review are not case-specific but pertain both to this administrative review and the countervailing duty administrative review and intent not to terminate the suspended investigation on miniature carnations from Colombia. The comments submitted by interested parties concerning issues common to both these reviews of suspended investigations are summarized and addressed in the Final Results of Countervailing Duty Administrative Review and Intent Not to Terminate Suspended Investigation; Miniature Carnations from Colombia which is being published concurrently with this notice. The following comment is specific only to this administrative review on roses and other cut flowers from Colombia.

Comment: The GOC contends that it was under no obligation to abolish the air freight rate "program" since the Department never found it countervailable and since there was never any subsidy on the merchandise conferred by air freight rates. Furthermore, the GOC argues that the Department's inclusion of air freight rates in the 1983 roses suspension agreement was not carried forward into the 1986 revised suspension agreement. Thus, consideration of air freight rates under the suspension agreement is no longer in effect. The GOC contends that the air freight rate "program" is in fact not a program because the Departmento Administrativo de la Aeronautica Civil ("DAAC") only sets minimum and maximum permissible air freight rates. The GOC argues that the Department has agreed with the respondent that the establishment of minimum and maximum rates "does not confer countervailable benefits."

The FTC asserts that the Department has the discretion to consider the continued existence of a potentially countervailable program even if that program is not specifically found to be countervailable in the suspension agreement. The FTC asserts that during the POR, the GOC was unable to establish that the actual air freight rates were competitively priced. Furthermore, the FTC asserts that the GOC did not submit comparative air freight rates or export statistics to third countries. Consequently, as best information

available, the FTC contends that the Department should presume air freight maximums limited competitive rates contrary to the terms of the suspension agreement.

Department's Position: While we agree with petitioner that the Department has discretion to consider a potentially countervailable program, we disagree with the FTC's assertion that the GOC has violated the suspension agreement. The DAAC minimum/maximum rates were established in 1981, prior to negotiation of the suspension agreement. At verification we found that the rates negotiated between the flower producers and air freight carriers were between the DAAC minimum/maximum rates permitted under the suspension agreement. There is no evidence that these negotiated rates limited competitive air rates. In addition, at verification, we examined documentation and determined the rates negotiated were between the minimum/maximum negotiated rates. Consequently, we determined that the GOC is not in violation of the suspension agreement.

With regard to abolition of this program, the Department agrees with the GOC in part. The Department's regulations at 19 CFR 355.25(a)(1)(i) require the GOC to abolish all programs for the subject merchandise that "the Secretary has found countervailable." Although the Department has found the air freight rate program subject to the suspension agreement (see Roses and Other Cut Flowers From Colombia; Final Results of Countervailing Duty Administrative Review, 55 FR 53584 (Comment 4) (December 31, 1990)), we have never found the air freight rates program to be a countervailable subsidy. Therefore, under the conditions set by 19 CFR 355.25(a)(1)(i) the GOC is not required to abolish the program in order to meet the requirements for termination of the suspension agreement.

Final Results of Review

After considering all of the comments received, we determine that the signatories have complied with the terms of the suspension agreement for the period January 1, 1988 through December 31, 1990. However, we will not terminate the suspension agreement. In order for us to terminate the suspension agreement the GOC must have abolished all programs which is not the case with PROEXPO and Plan Vallejo.

This administrative review and notice are in accordance with sections 751(a)(1)(C) of the Tariff Act (19 U.S.C. 1675(a)(1)(C)) and 19 CFR 355.22 and 355.25.

Dated: March 1, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–5308 Filed 3–7–94; 8:45 am]

BILLING CODE 3510–05–P

National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Nancy Hale, National Institute of Standards and Technology, Office of Technology Commercialization, Physics Building, room B–256, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket No. 92–002

Title: Methods of Reducing Wear on Silicon-Carbide Ceramic Surfaces

Description: New NIST lubricants dramatically reduce the friction coefficient of silicon-carbide ceramics, thereby minimizing wear. Lubrication is critical to the successful use of moving ceramic parts in a variety of applications.

NIST Docket No. 92–012

Title: Improved Voltage Comparator with Reduced Settling Time

Description: NIST researchers have developed a technique for improving the accuracy of voltage measurements produced by sampling comparators. The technique reduces waveform distortion and dramatically reduces settling time (i.e., the time it takes to make an accurate measurement following an abrupt input change).

NIST Docket No. 92–026

Title: Device and Method for Providing Accurate Time and/or Frequency

Description: The accuracy of clocks and oscillators can be enhanced using NIST technology for predicting random errors based on past performance. Using the NIST technology, for example, the accuracy of an inexpensive stopwatch can be improved by a factor of 20.

NIST Docket No. 92–039

Title: Exposure of Lithographic Resists by Metastable Rare Gas Atoms

Description: Existing lithography techniques can produce semiconductor features as small as 2 nanometers, but a new NIST approach might result in even smaller features. The NIST technique would use metastable rare gas atoms to expose a lithographic resist.

NIST Docket No. 93–002

Title: Process for the Preparation of Fiber-Reinforced Ceramic Matrix Composites

Description: NIST researchers have developed a technique for fabricating improved composites using fibers coated with a ceramic matrix material. The coating technique makes it possible to achieve controlled, uniform positioning of fibers within a ceramic matrix.

NIST Docket No. 93–025

Title: Photoionization Mass Spectroscopy Flux Monitor

Description: The NIST technology offers improved control for "growing" semiconductor materials by molecular beam epitaxy. The invention simultaneously monitors flux characteristics of many gaseous species being deposited on a substrate.

Dated: February 24, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–5243 Filed 3–7–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 030294A]

Pacific Fishery Management Council; Meeting

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

ACTION: Notice of agenda revision.

SUMMARY: An agenda for public meetings of the Pacific Fishery Management Council (Council) and its advisory entities, which are scheduled to meet on March 7–11, 1994, was published in the **Federal Register** on

February 22, 1994, (59 FR 8458–8459). The following change is made to the agenda. All other information originally published remains unchanged.

Agenda Revision

Under "Other Meetings" at 59 FR 8459 in the original notice, the Council's Groundfish Permit Review Board is extending its meeting for one additional day. The meeting will continue on March 8, in order to accommodate the review of additional appeals. The location of the meeting remains unchanged at the Columbia River Red Lion, 1401 North Hayden Island Drive, Portland, OR; telephone: (503) 283–2111.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 S.W. First Avenue, suite 420, Portland, OR; telephone: (503) 326–6352.

Dated: March 2, 1994.

David S. Crestin,

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

[FR Doc. 94–5182 Filed 3–3–94; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIME: April 11–15, 1994, from 9 a.m. to approximately 5 p.m. each day.

ADDRESSES: The meeting will be held at the Ramada Hotel Old Town, 901 North Fairfax Street, Alexandria, Virginia, 22314, (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: Rober K. Chiago, Executive Director, National Advisory Council on Indian Education, 330 C Street SW., room 4072, Switzer Building, Washington, DC 20202–7556. Telephone: 202/205–8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (part C, title V, Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

Under section 5342(b)(2) of the Indian Education Act, the Council is directed to reviewed applications for assistance and to make recommendations to the Secretary of Education with respect to their approval. The duly authorized Proposal Review Committee of the Council will meet in closed session staring at approximately 9 a.m. and will end at approximately 5 p.m. each day during the proposal review session. The agenda will include reviewing grant applications for assistance for programs authorized by subparts 1, 2, and 3 of the Indian Education Act of 1988 including applications for (1) Discretionary grants to Indian Controlled Schools; (2) Educational Services for Indian Children; (3) Educational Personnel Development Projects; and (4) Educational Services for Indian Adults.

The discussion during the review process may disclose sensitive information about applicants, qualifications of proposed staff, funding level requests and the names and comments of expert reviewers. Such discussion are likely to disclose trade secrets, commercial or financial information obtained from a person, and is privileged or confidential and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (4) and (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)).

Records are kept of all Council proceedings, and are available for public inspection. A summary of activities of this closed meeting which are informative to the public consistent with the policy of title 5 U.S.C. 552b shall be available for public inspection within 14 days of the meeting at the office of the National Advisory Council on Indian Education located at 330 C Street SW., room 4072, Washington, DC 20202–7556 from the hours of 9 a.m. to 4:30 p.m. Monday through Friday, except holidays.

Dated: February 17, 1994.

Robert K. Chiago,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 94–5200 Filed 3–7–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL94–30–000, et al.]

Metropolitan Edison Company, et al; Electric Rate and Corporate Regulation Filings

February 28, 1994.

Take notice that the following filings have been made with the Commission.

1. Metropolitan Edison Co.

[Docket No. EL94–30–000]

Take notice that on December 22, 1994, Metropolitan Edison Company (Met-Ed) tendered for filing a request for waiver from Sections 35.14 and 35.19a of the Commission's regulations to allow Met-Ed to pass back to its wholesale customers certain refunds, including interest, in accordance with the proposed refund described in its filing. Met-Ed states that the refunds relate to prior overpayments of fees to the Department of Energy for the eventual disposal of spent nuclear fuel.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Northeast Utilities Service Co.

[Docket No. ER93–94–001]

Take notice that on February 16, 1994, Northeast Utilities Service Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Electric and Gas Co.

[Docket No. ER93–862–000]

Take notice that on August 12, 1993, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an initial Rate Schedule for the sale of Capacity and Energy to the Borough of Park Ridge, New Jersey (Park Ridge). Thereafter, in response to discussions with Commission Staff, PSE&G on December 22, 1993, mailed for filing a First Supplement to said Rate Schedule.

In response to further discussions with Commission Staff, PSE&G on February 17, 1994, tendered for filing the Second Supplemental Agreement by

and between PSE&G and Part Ridge which addresses FERC inquiries, defines terminology, and explains methodology.

Copies of the filing were served upon Park Ridge, the New Jersey Board of Regulatory Commissioners, and the New Jersey Department of the Public Advocate.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Co.

[Docket Nos. ER94–48–000 ER94–912–000]

Take notice that on February 23, 1994, Northeast Utilities Service Company (NUSCO) tendered for filing a Service Agreement under NUSCO's Transmission Tariff No. 2. This Service Agreement provides for non-firm transmission to the NU System Companies for their power sales to others. In particular, in these dockets, the Service Agreement will provide for transmission service for the NU System Companies' sales to the New York Power Authority (NYPA). NUSCO states that its filing is in accordance with the Commission's filing requirements and that a copy of the filing has been mailed to NYPA.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corporation

[Docket No. ER94–328–000]

Take notice that on February 23, 1994, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and the New York Power Authority (NYPA) dated February 16, 1994, providing for the terms and conditions of loss compensation for control area transactions.

The effective date of April 1, 1994 is requested by Niagara Mohawk.

Copies of this filing were served upon NYPA and the New York State Public Service Commission.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Pennsylvania Power & Light Co.

[Docket No. ER94–623–000]

Take notice that on February 17, 1994, Pennsylvania Power & Light Company (PP&L) supplemented its original filing in the above docket by tendering for filing as initial rate schedules one borderline service agreement with New York State Electric & Gas Corporation (NYSEG). In accordance with the Commission's recently announced policy on the filing of jurisdictional service agreements effective as of May 19, 1964. PP&L states that the borderline sales are based on state commission approved retail rates.

PP&L states that copies of the filing were served on NYSEG.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Indianapolis Power & Light Co.

[Docket No. ER94–974–000]

Take notice that on February 15, 1994, Indianapolis Power & Light Company (IPL), tendered for filing proposed changes in its FERC Rate Schedule No. 21. The proposed changes would increase revenues from jurisdictional sales and service by approximately $57,500 based on the twelve-month period ending December 31, 1992.

The rate schedule supplement consists of Amendment No. 4 to the Agreement dated as of October 9, 1986, which sets forth the rates, charges, terms and conditions for wholesale electric service to Boone County Rural Electric Membership Corporation (Boone REMC). Amendment No. 4 increases the rate, revises appropriate contract language reflecting said assignment, and extends the existing Agreement for a successive term of 15 years. The Agreement would otherwise terminate December 10, 1993.

The only customer affected by this filing is Wabash Valley, which has executed said Amendment No. 4 and has concurred in this filing.

Copies of this filing were sent to Wabash Valley and the Indiana Utility Regulatory Commission.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of Colorado

[Docket No. ER94–977–000]

Take notice that on February 18, 1994, Public Service Company of Colorado (Public Service) filed with the Commission amendments to its Power Supply Agreement (PSA) with Holy Cross Electric Association, Inc. (Holy Cross), which is on file as Public Service Rate Schedule FERC No. 52. The changes are to lower the demand charge for Full Requirements Service under the PSA from $13.08 per Kw of billing demand to $11.53 per Kw of billing demand and to specify the loss factor used for transactions under Article 5.4 of the PSA, which provides for Economy Energy purchases, as 4.6% (Public Service previously used 6%). Both amendments are proposed to be effective as of April 15, 1992, (requesting waiver for good cause shown), although Public Service requests that the decrease in the demand charge be conditioned on final FERC action (other than rejection) of the Transmission Integration and Equalization Agreement (TIE Agreement) between Public Service and Holy Cross, which was filed by Public Service in another docket, and the TIE Agreement being given an effective date of April 15, 1992. Due to the relationship between the TIE Agreement and the proposed decrease in the demand charge under the PSA, Public Service also requests that the two proceedings be consolidated.

Public Service states that copies of the filing have been served on Holy Cross, the Colorado Office of Consumer Counsel, and the Colorado Public Utilities Commission.

Comment date: March 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of Colorado

[Docket No. ER94–978–000]

Take notice that on February 18, 1994, Public Service Company of Colorado (Public Service) filed with the Commission the Transmission Integration and Equalization Agreement (TIE Agreement) between Public Service and Holy Cross Electric Association, Inc. (TIE Agreement). The TIE Agreement provides for the integration of the Public Service and Holy Cross Electric Association, Inc. (Holy Cross) transmission facilities, the creation of an integrated Public Service/Holy Cross transmission system, and a mechanism whereby the two parties share the costs of the integrated system in accordance with the loads each places on the integrated system. Public Service requests that the TIE Agreement be effective as of April 15, 1992, and requests waiver of the Commission's notice requirements for good cause shown. Public Service also requests that this proceeding be consolidated with another Public Service filing, which proposes two amendments to the Power Supply Agreement between Public Service and Holy Cross, on file as Public Service Rate Schedule FERC No. 52. Public Service states that consolidation is appropriate due to the relationship between the TIE Agreement and one of the proposed amendments to Rate Schedule No. 52.

Public Service states that copies of the filing have been served on Holy Cross, the Colorado Office of Consumer Counsel, and the Colorado Public Utilities Commission.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Portland General Electric Co.

[Docket No. ER94–979–000]

Take notice that on February 22, 1994, Portland General Electric Company (PGE) tendered for filing an amendment to the Grizzly Construction Trust Agreement Between the Bonneville Power Administration (BPA) and Portland General Electric Company (PGE).

PGE has served copies of this filing on the Bonneville Power Administration and the Oregon Public Utility Commission.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Co.

[Docket No. ER94–980–000]

Take notice that on February 22, 1994, Portland General Electric Company (PGE) tendered for filing an alternate point of delivery for service under Contracts with the cities of Burbank (PGE Rate Schedule FERC No. 77) and Glendale (PGE Rate Schedule FERC No. 78), California. PGE requests waiver of the notice provisions of 18 CFR Part 35.3 to allow service at the new point of delivery effective February 16, 1994, because of extraordinary circumstances created by the California earthquake of January 17, 1994.

PGE has served copies of this filing on the cities of Burbank and Glendale, and on the Oregon Public Utility Commission.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Central Illinois Public Service Co.

[Docket No. ER94–982–000]

Take notice that on February 22, 1994, Central Illinois Public Service Company (CIPS) submitted for filing the First Amendment, dated January 5, 1994 (First Amendment), to the Power Supply and Transmission Service Agreement, dated January 9, 1992 (Agreement), between CIPS and Wabash Valley Power Association, Inc. (Wabash Valley). At Wabash Valley's request, the First Amendment provides that Wabash Valley will take service under levelized demand charges for an additional two years beyond the period for levelized rates contemplated in the presently effective Agreement.

CIPS seeks an effective date of January 1, 1994 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served on Wabash Valley, the Illinois Commerce Commission and the Indiana Utility Regulatory Commission.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Co.

[Docket No. ER94–983–000]

Take notice that on February 22, 1994, Northeast Utilities Service Company (NUSCO) tendered for filing a Service Agreement to provide non-firm transmission service to Great Bay Power Corporation (Great Bay) under the NU system Companies' Transmission Service Tariff No. 2.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Montaup Electric Co.

[Docket No. ER94–984–000]

Take notice that on February 23, 1994, Montaup Electric Company (Montaup) filed a credit of $2,283,256.23 under its Purchased Capacity Adjustment Clause (PCAC) to true up the amounts billed in 1993 under a forecast billing rate to conform with actual purchased capacity costs. The credit will appear in bills for January 1994 service rendered for all requirements service to Montaup's affiliates Eastern Edison Company in Massachusetts and Blackstone Valley Electric Company in Rhode Island, contract demand service to its affiliate Newport Electric Corporation in Rhode Island, and contract demand service to non-affiliates: Pascoag Fire District in Rhode Island and the Town of Middleborough in Massachusetts.

Comment date: March 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Northern Electric Power Co., L.P.

[Docket No. ER94–995–000]

Take notice that on February 28, 1994, Northern Electric Power Co., L.P. ("Northern Electric") tendered for filing a Third Amendment to the Power Purchase Agreement dated June 24, 1992, on file with the Commission as Rate Schedule, FERC No. 1. According to Northern Electric, the Third Amendment makes several minor changes to the Rate Schedule which are being made at the request of the lenders providing construction financing for the Hudson Falls hydroelectric project. Northern Electric further states that the changes correct typographical errors; replace the site description with a corrected site description; incorporate *force majeure* provisions of the Interconnection Agreement for the Hudson Falls project into the Power Purchase Agreement; and provide a waiver by the purchasing utility of any rights it may have, outside the Power Purchase Agreement, to limit its power purchase obligations under the Power Purchase Agreement. Northern Electric further states that the Interconnection Agreement is being submitted due to the incorporation of its *force majeure* provisions into the Power Purchase Agreement, and is not itself jurisdictional.

Comment date: March 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5207 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER92–429–002, et al.]

Torco Energy Marketing, Inc., et al.; Electric Rate and Corporate Regulation Filings

February 25, 1994.

Take notice that the following filings have been made with the Commission:

1. Torco Energy Marketing, Inc.

[Docket No. ER92–429–002]

Take notice that on January 18, 1994, Torco Energy Marketing, Inc. filed certain information as required by the Federal Energy Regulatory Commission's September 7, 1989 order in this proceeding, 48 FERC ¶ 61,294 (1989). Copies of the Torco Energy Marketing, Inc. filing are on file with the Commission and are available for public inspection.

2. IES Utilities, Inc.

[Docket No. ER94–971–000]

Take notice that on February 14, 1994, IES Utilities, Inc. (IESU) tendered for filing a Notice of Cancellation for Iowa

Southern Utilities Company (ISU) FERC Rate Schedules No. 34, 37, and 46, and for Iowa Electric Light and Power Company FERC Rate Schedule 48. IESU is the renamed surviving corporation resulting from the December 31, 1993, merger of ISU and IE. IESU requests an effective date of January 1, 1994, for all of the proposed cancellations.

A copy of the filing was served upon the Iowa State Utilities Board.

Comment date: March 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Jeffrey J. Burdge

[Docket No. ID–2484–001]

Take notice that on December 17, 1993, Jeffrey J. Burdge (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director
Pennsylvania Power & Light Company.
Director
Dauphin Deposit Corporation.
Director
Dauphin Deposit Bank & Trust Company.

Comment date: March 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Richard A. Liddy

[Docket No. ID–2811–000]

Take notice that on December 22, 1993, Richard A. Liddy (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director
Union Electric Company.
Director, President and Chief Executive Officer
General American Life Insurance Company.

Comment date: March 11, 1994, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5208 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2376–001 Virginia]

Appalachian Power Co.; Availability of Environmental Assessment

March 2, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license for the existing Reusens Project, located on the James River in Amherst and Bedford Counties, Virginia, near the city of Lynchburg, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate mitigation or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2376–001 to all comments. For further information, please contact Kim A. Nguyen, Environmental Coordinator, at (202) 219–2841.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5209 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–237–000, et al.]

El Paso Natural Gas Company, et al.; Natural Gas Certificate Filings

February 25, 1994.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company and Arkla Energy Resources Company

[Docket No. CP94–237–000]

Take notice that on February 18, 1994, El Paso Natural Gas Company (El Paso) P.O. Box 1492 El Paso, Texas 79978 and Arkla Energy Resources Company (AER) 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–237–000, a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service provided pursuant to El Paso's Rate Schedule X–52 and AER's Rate Schedule XE–52, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that by orders issued June 25, 1979, in Docket Nos. CP79–155 & CP79–243 El Paso and AER, successor-in-interest to Arkansas Louisiana Gas Company and Arkla Energy Resources, a division of Arkla, Inc. were authorized to exchange natural gas pursuant to an agreement dated December 29, 1978 as amended, between them. The agreement, it is said, provided for the transportation and delivery on an exchange basis of natural gas in Hemphill, Roberts, and Wheeler Counties, Texas, and Beckham, Caddo, Custer, Ellis, Roger Mills, and Washita Counties, Oklahoma.

El Paso and AER state that this arrangement is no longer required by either party and has been terminated pursuant to mutual written agreement of the parties.

No facilities are proposed to be abandoned herein.

Comment date: March 18, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP94–231–000]

Take notice that on February 16, 1994, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP94–231–000 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 install facilities at an additional delivery point for Missouri Gas Energy (MGE) to accommodate the delivery of gas transported by WNG, under WNG's blanket certificate issued in Docket No. CP82–479–000 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.

WNG proposes to construct and operate a 2-inch tap and measuring, regulating and appurtenant facilities on

WNG's Ottawa-Sedalia 12-inch line in Johnson County, Missouri, for deliveries of gas to MGE to supply a new housing development. It is estimated that the construction cost would be approximately $16,860, for which WNG would be reimbursed by MGE. It is stated that the facilities would be used for the delivery of up to 90 Mcf of natural gas on a peak day and 3,800 Mcf on an annual basis in the first year and 340 Mcf on a peak day by the third year. It is stated that the volumes proposed for delivery are within MGE's existing entitlement.

Comment date: April 11, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Florida Gas Transmission Company

[Docket No. CP94–243–000]

Take notice that on February 22, 1994, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–243–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to upgrade an existing meter station 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 the subject existing meter station is called the Orlando Meter Stations and is used to measure gas deliveries to Peoples Gas System, Inc. (Peoples). FGT proposes to upgrade the meter station by installing a high pressure rotary meter and related appurtenant facilities. The meter station is located at milepost 6.7 on FGT's 6-inch Orlando Lateral in Orange County, Florida. FGT also states that Peoples shall reimburse it for all costs relating to the proposed upgrade which is estimated to be $11,500.

It is further stated that the proposed upgrade would not change the certificated levels of service currently being provided to Peoples by FGT. Nor would the proposed upgrade increase contractual gas quantities. Therefore, the proposed upgrade would not impact FGT's peak day or annual deliveries. The present and proposed quantity to be delivered at the Orlando division is: up to 32,520 MMBtu per day and up to 8,808,900 MMBtu per year. It is stated that the end-use would be residential, commercial, and industrial.

Comment date: April 11, 1994, in accordance with Standard Paragraph G 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5210 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–240–000, et al.]

El Paso Natural Gas Company, et al.; Natural Gas Certificate Filings

February 28, 1994.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Co.; Sunterra Gas Gathering Co.

[Docket No. CP94–240–000]

Take notice that on February 22, 1994, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, and Sunterra Gas Gathering Company (Sunterra), Alvarado Square, Albuquerque, New Mexico 87158–2612, filed in Docket No. CP94–240–000 a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a production area natural gas exchange service between El Paso and Sunterra, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso and Sunterra propose to abandon a production area gas exchange service pursuant to a Composite Supplemental Agreement to a Gas Purchase Agreement (agreement) between El Paso and Sunterra dated May 1, 1975, under El Paso's Rate Schedule X–13 and Sunterra's Rate Schedule No. 2.[1] El Paso and Sunterra state they have agreed to terminate the agreement, in a Letter Agreement dated October 27, 1993, effective October 31, 1993, with any imbalances to be resolved by December 31, 1993. El Paso and Sunterra state that there are no existing imbalances under the agreement to be abandoned.

No facilities are proposed to be abandoned herein.

Comment date: March 21, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Southern Natural Gas Co.

[Docket No. CP94–245–000]

Take notice that on February 23, 1994, Southern Natural Gas Company

[1] The exchange was part of Sunterra's Rate Schedule No. 2 authorizing Sunterra's jurisdictional sales for resale. Sunterra's Rate Schedule No. 2 is no longer subject to regulation since the Wellhead Decontrol Act of 1989 deregulated first sales contracts terminated after July 26, 1989.

(Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP94–245–000 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 establish a point of delivery for an existing customer under Southern's blanket certificate issued in Docket No. CP82–406–000 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.

Southern proposes to provide service to Alabama Gas Corporation (Alagasco) at a new point of delivery by use of existing measurement facilities that Southern previously used to serve the Lamar County Gas District. Southern states that the service will enable Alagasco to serve a new commercial customer. In addition, Southern states that it will not have to construct any new facilities in order to serve Alagasco at the proposed delivery point. It is stated that the average daily flow to the proposed delivery point will be 3 Mcf per day of natural gas.

Comment date: April 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Co. of America and ANR Pipeline Co.

[Docket No. CP94–246–000]

Take notice that on February 23, 1994, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148 and ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94–246–000 a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon exchange services, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that authority is requested for: (1) Natural to abandon an exchange service with ANR authorized in Docket No. G–10057 and performed under Natural's Rate Schedule X–7;

(2) Natural to abandon an exchange service with ANR authorized in Docket No. CP69–251, as amended, and performed under Natural's Rate Schedule X–21;

(3) Natural and ANR to abandon an exchange service authorized in Natural's Docket No. CP75–202, as amended, and ANR's Docket No. CP75–205, as amended, and performed under Natural's Rate Schedule X–58 and ANR's Rate Schedule X–44; and

(4) Natural and ANR to make up imbalances attributable to the above exchange agreements at the existing interconnections specified in such exchange agreements and/or other transportation and/or exchange agreements between them or at more convenient interconnections located on their systems, or alternatively, by offsetting such imbalances among each other or with imbalances under other transportation and/or exchange agreements between them.

It is stated that pursuant to a gas exchange agreement between Natural and ANR dated March 6, 1956, (1956 Agreement), Natural's Rate Schedule X–7, Natural and ANR exchanged during periods of emergency, volumes of natural gas in Bureau County, Illinois pursuant to authorization granted in Docket No. G–10057.

It is also stated that pursuant to an exchange agreement dated January 15, 1969, as amended (1969 Agreement), Natural's Rate Schedule X–21, Natural and ANR exchanged up to 125,000 Mcf of natural gas per day in Cameron Parish, Louisiana and Hansford and Wheeler Counties, Texas pursuant to authorization granted in Docket No. CP69–251, as amended.

It is further stated that pursuant to an exchange agreement dated November 13, 1974, as amended (1974 Agreement), Natural and ANR exchanged up to 10,000 Mcf of natural gas per day in Hansford and Wheeler Counties, Texas and Beaver, Caddo and Woodward Counties, Oklahoma pursuant to authorization granted in Natural's Docket No. CP75–202, as amended, and in ANR's Docket No. CP75–205, as amended.

Moreover, it is stated that pursuant to a letter agreement between Natural and ANR dated August 20, 1993, Natural and ANR agreed to terminate the 1956, 1969 and 1974 Agreements effective December 1, 1993. Therefore, Natural and ANR requested in the present joint application, authority for: (1) Natural to abandon an exchange service with ANR authorized in Docket No. G–10057 and performed under Natural's Rate Schedule X–7;

(2) Natural to abandon an exchange service with ANR authorized in Docket No. CP69–251, as amended, and performed under Natural's Rate Schedule X–21;

(3) Natural and ANR to abandon an exchange service authorized in Natural's Docket No. CP75–202, as amended, and ANR's Docket No. CP75–205, as amended, and performed under Natural's Rate Schedule X–58 and ANR's Rate Schedule X–44; and

(4) Natural and ANR to make up imbalances attributable to the 1956, 1969 and 1974 Agreements at the existing interconnections specified in such exchange agreements and/or other transportation and/or exchange agreements between them or at more convenient interconnections located on their systems, or alternatively, by offsetting such imbalances among each other or with imbalances under other transportation and/or exchange agreements between them.

Comment date: March 21, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5211 Filed 03–07–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–150–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

March 2, 1994.

Take notice that on February 28, 1994, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

First Revised First Revised Sheet No. 9
Second Substitute First Revised Sheet No. 13
Second Substitute First Revised Sheet No. 16
First Revised First Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed pursuant to the approved recovery mechanism of its Tariff to implement recovery of $9.3 million of costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation fee surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs and an adjustment to the maximum base tariff rates of Rate Schedule ITS shippers to recover the remaining ten percent (10%). ANR has requested that the Commission accept the tendered sheets to become effective March 1, 1994.

ANR states that all of its Volume No. 1 customers and interested state commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5212 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–6–003 and RP94–64–003]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 2, 1994.

Take notice that on February 25, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that to resolve the issue of allocating Stranded 858 costs to Rate Schedule GS-T customers, the parties in the captioned dockets have agreed that Northern should modify its tariff to provide that any allocation of Stranded 858 costs will incorporate the weighted average peak day contract entitlement for GS-T customers. Such weighted average peak day will be derived by taking the weighted average of the underlying Rate Schedule GS peak contract entitlements that were in effect prior to November 1, 1993. Additionally, parties have agreed that Northern will determine the monthly Stranded 858 bill for GS-T customers by multiplying the GS-T Stranded 858 rate component by the lower of: (i) The weighted average GS-T peak contract entitlement; or (ii) the actual GS-T volume moved under a customer's GS-T contract. Such calculation will be made for each day of a given month, and the monthly Stranded 858 amount will be the total of these daily calculations. Therefore, Northern has filed Third Revised Sheet No. 245 and First Revised Sheet No. 246 to establish this modification effective November 1, 1993.

Northern states that copies of this filing were served upon the company's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 10, 1994. All protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5214 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–7–002 and RP94–65–003]

Northern Natural Gas Co., Proposed Changes in FERC Gas Tariff

March 2, 1994.

Take notice that on February 25, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that to resolve the issue of allocating Gas Supply Realignment (GSR) costs to Rate Schedule GS–T customers, the parties in the captioned dockets have agreed that Northern should modify its tariff to provide that any allocation of GSR costs will incorporate the weighted average peak day contract entitlement for GS–T customers. Such weighted average peak day will be derived by taking the weighted average of the underlying Rate Schedule GS peak contract entitlements that were in effect prior to November 1, 1993. Additionally, parties have agreed that Northern will determine the monthly GSR bill for GS–T customers by multiplying the GS–T GSR rate component by the lower of: (i) The weighted average GS–T peak contract entitlement; or (ii) the actual GS–T volume moved under a customer's GS–T contract. Such calculation will be made for each day of a given month, and the monthly GSR amount will be the total of these daily calculations. Therefore, Northern has filed First Revised Sheet No. 248 to establish this modification effective November 1, 1993.

Northern states that copies of this filing were served upon the company's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 10, 1994. All protests will be considered by

the Commission in determining the appropriate action to be taken, but will not serve to make protestant a party to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5215 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–152–000]

Northern Border Pipeline Co.; Petition for Limited Waiver of Tariff Provisions

March 2, 1994.

Take notice that on February 28, 1994, Northern Border Pipeline Company (Northern Border) hereby petitions the Federal Energy Regulatory Commission (Commission) for a limited waiver of Northern Border's FERC Gas Tariff, to the extent necessary, to extend the time period to June 30, 1994 in which firm shippers have to discharge the Tender Deficiencies accumulated during the pipeline outage on Foothills Pipe Lines Ltd.

Any person desiring to be heard or to make any protest with reference to said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before March 10, 1994. Protests will be considered by it 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 in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5213 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–165–001]

OkTex Pipeline Co.; Place Tariff Sheets in Effect

March 2, 1994.

Take notice that on February 16, 1994, OkTex Pipeline Company (OkTex) filed a request to place into effect on March 1, 1994, Original Volume No. 1, Third Revised Sheet No. 5.

OkTex states that on August 6, 1993 OkTex filed with the Commission Second Revised Tariff Sheet No. 5. By order issued September 3, 1993, the Commission accepted and suspended the tariff sheet for five months to become effective February 5, 1994, subject to refund and conditions, and ordered a public hearing to be held.

OkTex states that the rates reflected in Third Revised Tariff Sheet No. 5, are lower than those accepted in the September order in anticipation of a settlement offer which will be filed.

OkTex states that it has served the foregoing document upon each person designated on the official service list compiled by the Secretary.

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 § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before March 10, 1994. 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 in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5216 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–153–000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

March 2, 1994.

Take notice that on February 18, 1994, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets as reflected on Appendix A to the filing.

The subject tariff sheets bear an issue date of February 28, 1994 and a proposed effective date of April 1, 1994.

Panhandle states that this filing is necessary to recover a portion of certain additional take-or-pay settlement and contract reformation costs in accordance with the Commission's Order No. 528 cost-sharing and recovery mechanism. The proposed tariff sheets reflect a volumetric surcharge of 0.19¢ per Dt. to effectuate the recovery of 75% of approximately $2.4 million of take-or-pay settlement and contract reformation costs related to gas purchase arrangements with various producer suppliers. Panhandle proposes to recover these amounts over a two year period commencing April 1, 1994 and terminating on March 31, 1996. The volumetric surcharge is applicable to all volumes transported by Panhandle (including volumes transported under Storage Related Transportation), with two limited exceptions. The volumetric surcharge on transportation volumes shall not be applied to:

(i) Volumes of gas withdrawn from storage, to the extent the surcharge was applicable to the transportation of the corresponding volumes into storage; or

(ii) Volumes of gas transported on any portion of the Panhandle system for one Shipper,when title to such gas passes to another Shipper of gas for immediate redelivery and subsequent transportation on the Panhandle system.

Panhandle further states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 9, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5217 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–28–000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

March 2, 1994.

Take notice that on February 28, 1994, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets listed on Appendix A to the filing. The proposed effective date of these revised tariff sheets is April 1, 1994.

Panhandle states the filing is made in accordance with Section 24 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, First

Revised Volume No. 1. The revised tariff sheets filed reflect the following changes to the Fuel Reimbursement Percentages:

(1) No change in the Gathering Fuel Reimbursement Percentage;
(2) a .06% increase in the Field Zone Fuel Reimbursement Percentage;
(3) No change in the Market Zone Fuel Reimbursement Percentage;
(4) No change in the Field Area Storage Percentages; and
(5) No change in the Market Area Storage Percentages.

Panhandle states that copies have been served on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5218 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–253–000]

Tennessee Gas Pipeline Co.; Request Under Blanket Authorization

March 2, 1994.

Take notice that on February 25, 1994, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–253–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to replace an existing 3" meter tube with a 4" tube in order to more accurately measure the volumes received for the account of the City of Parsons, Tennessee, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that it currently transports natural gas on a firm basis to the City of Parsons pursuant to a firm gas transportation agreement and that the current capacity being delivered exceeds the flow rate that can be accurately measured by the existing 3" meter facility. Additionally, Tennessee states that in order to improve the measurement accuracy of this facility, it proposes to replace the existing meter tube with a 4" meter tube at Meter No. 2–0055–1, the Parsons Sales station located in Decatur County, Tennessee. Tennessee states that the replacement of these facilities will not increase the contracted delivery quantity under this contract, that the facility will be located on an existing right-of-way that the cost of renovating this facility is estimated to be $9,000 which cost will be borne by Tennessee.

Tennessee also states that it does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to the City of Parsons. Tennessee further states that the replacement of this existing meter is not prohibited by its currently effective tariff and that it has sufficient capacity to accomplish the deliveries without detriment or disadvantage to any of Tennessee's customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5219 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–151–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 2, 1994.

Take notice that on February 28, 1994 Texas Eastern Transmission Corporation (Texas Eastern) filed a limited application pursuant to Section 4 of the Natural Gas Act, 15 USC Section 717c (1988), and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder to recover gas supply realignment costs (GSR Costs) which Texas Eastern states it incurred as a consequence of implementing Order No. 636.

Texas Eastern states it is filing to recover GSR Costs from customers in accordance with the procedures set forth in Section 15.2(C) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1, and in accordance with the Commission's order issued April 22, 1993 (April 22 Order), September 17, 1993 (September 17 Order) and December 17, 1993 (December 17 Order) in Docket Nos. RS92–11–000, RS92–11–003, RS92–11–004, RP88–67–000, et al., (Phase I/Rates), and RP92–234–001. Texas Eastern states that Order No. 636 and the April 22, September 17 and December 17 Orders permit Texas Eastern to file this limited Section 4 filing to continue recovery of its GSR Costs.

Texas Eastern states that the filing includes known and measurable GSR Costs incurred since the date of its previous quarterly filing, plus carrying charges through February 28, 1994, totalling $19,106,544. Additional interest of $352,922 at the current FERC annual rate of 6.00% is added for carrying charges from March 1, 1994 to the projected payment dates. The proposed effective date of the filing is April 1, 1994.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions, as well as current interruptible customers.

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. All such motions or protests should be filed on or before March 10, 1994. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5221 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–27–000]

Texas Eastern Transmission Corp; Proposed Changes in FERC Gas Tariff

March 2, 1994.

Take notice that on February 25, 1994, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing.

Texas Eastern states that it is filing the tariff sheets to modify Sections 9.2, 9.3, 9.4, 9.5, 9.9 and 14.4 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1, necessary to reflect a permanent capacity release transaction executed under Texas Eastern's Rate Schedule FT–1. The release was from North Attleboro Gas Company to CNG Gas Services to be effective December 17, 1993. Texas Eastern states that it posted the capacity release transaction on the LINK® System in accordance with Section 3.14 of Texas Eastern's General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1.

The tariff sheets are proposed to be effective December 17, 1993. Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before March 10, 1994. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–5220 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES94–16–000]

UtiliCorp United Inc.; Application

March 2, 1994.

Take notice that on February 25, 1994, UtiliCorp United Inc. (UtiliCorp) filed an application under Section 204 of the Federal Power Act seeking authorization to extend or enter into a replacement Reimbursement Agreement and a Pledge Agreement to secure a long-term letter of credit in the amount of not more than $7.3 million. Also, UtiliCorp requests exemption from the Commission's competitive bidding regulations.

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 March 24, 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. 94–5222 Filed 3–7–94; 8:45 am]

BILLING CODE 6717–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

(1) The sponsor of the collection;

(2) Collection number(s);

(3) Current OMB docket number (if applicable);

(4) Collection title;

(5) Type of request, e.g., new, revision, extension, or reinstatement;

(6) Frequency of collection;

(7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;

(8) Affected public;

(9) An estimate of the number of respondents per report period;

(10) An estimate of the number of responses per respondent annually;

(11) An estimate of the average hours per response;

(12) The estimated total annual respondent burden; and

(13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before April 7, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–541
3. 1902–0066
4. Gas Pipeline Certificates: Curtailment Plan
5. Extension
6. On occasion
7. Mandatory
8. Businesses or other for-profit
9. 25 respondents
10. 1 response
11. 256 hours per response
12. 6,400 hours
13. FERC–541 is required to determine the just and reasonableness of allocation methods used by jurisdictional pipelines to allocate remaining gas supplies during curtailment periods. It is necessary for the determination that such methods of allocation are not unduly

discriminatory between persons, localities, or classes of service.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), which amended chapter 35 of title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, DC, March 2, 1994.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 94–5253 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 94–10–NG]

Age Refining, Inc.; Order Granting Blanket Authorization To Import Natural Gas and Liquefied Natural Gas From Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting AGE Refining, Inc. (AGE) authorization to import up to 219 Bcf of natural gas and up to 219 Bcf of liquefied natural gas from Mexico over a two-year term, beginning on the date of first delivery.

AGE's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 28, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–5260 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–09–NG]

Direct Energy Marketing Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Direct Energy Marketing Inc. blanket authorization to import up to 200 Bcf of natural gas from Canada over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 28, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–5259 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–08–NG]

Tarpon Gas Marketing Ltd.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tarpon Gas Marketing Ltd. blanket authorization to import up to 100 Bcf of natural gas from Canada over a two-year term, beginning on the date of first delivery after April 6, 1994.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 22, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–5258 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–06–NG]

Wisconsin Gas Co.; Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has granted Wisconsin Gas Company (Wisconsin Gas) authorization to import from ProGas Limited up to 35,105 Mcf per day of Canadian natural gas over an eight-year period ending November 1, 2002.

Wisconsin Gas' order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 22, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–5257 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Cases Filed; Week of January 21 Through January 28, 1994

During the Week of January 21 through January 28, 1994, the appeals and applications for other relief listed in the Appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date receipt by an aggrieved person of actual notice, whichever, occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Jan. 21 to Jan. 28, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Jan 24, 1994	Joyce E. Economus, Portland, OR	LFA–0350	Appeal of an information request denial. If Granted: Joyce E. Economus would receive a complete copy of a report by an outside investigator concerning alleged management problems at the Bonneville Power Administration.
Jan. 28, 1994	Texaco/Bradley's Texaco, Easton, Md	RR321–144	Request for modification/rescission in the Texaco refund proceeding. If Granted: The October 2, 1991 Dismissal Letter (Case No. RF321–5033) issued to Bradley's Texaco would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.

REFUND APPLICATIONS RECEIVED

[Week of Jan. 21 to Jan. 28, 1994]

Date received	Name of refund proceeding/name of refund applicant	Case No.
01/21/94	Bill's Arco	RF304–15444
01/21/94	Lou-Jak Trucking Service	RC272–226
01/13/94	New Richmond SD	RA272–56
01/18/94	Indianapolis Baptist School	RF272–95103
01/21/94 thru 01/28/94	Texaco Oil Fund Applications Received	RF321–20064 thru RF321–20115

[FR Doc. 94–5254 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

Cases Filed; Week of February 11, Through February 18, 1994

During the Week of February 11 through February 18, 1994, the appeals and applications for exception or other relief listed in the Appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Feb. 11 through Feb. 18, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Feb. 14, 1994	Chevron U.S.A., Inc., Washington, DC	LRR–0015	Request for modification/rescission. If Granted: The December 8, 1993 Decision and Order (Case No. LRD–0010) issued to Chevron USA, Inc. would be rescinded and the firm would not be required to submit the entire consolidated corporate income tax returns of Chevron Corporation and Chevron's parent for the years 1980 and 1981.
Do	Hunt Oil Company, Pierce, ID	LEE–0086	Exception to the reporting requirements. If Granted: Hunt Oil Company would not be required to file Form EIA–782B, "Resellers'/Retailers Monthly Petroleum Product Sales Report."
Do	Kenneth H. Besecker, Martinez, GA	LFA–0355	Appeal of an Information Request Denial. If Granted: The February 4, 1994 Freedom of Information Request Denial issued by the Savannah River Operations Office would be rescinded, and Kenneth H. Besecker would receive access to the records he requested.
Do	Lotepro Corporation, Philadelphia, PA	LFA–0356	Appeal of an Information Request Denial. If Granted: The January 14, 1994 Freedom of Information Request Denial issued by the SSC Project Office would be rescinded, and Lotepro Corporation would receive access to requested copies of the proposal evaluations, minutes, and files pertaining to the procurement of the Sactor Refrigeration System.

REFUND APPLICATIONS RECEIVED
[Week of Feb. 11 through Feb. 18, 1994]

Received	Name of firm	Case No.
2/11/94 thru 2/18/94	Texaco Oil refund applications received	RF321–20223 thru RF321–20305
2/14/94	Al Tech Specialty Steel Corp	RF272–95124
2/14/94	Commonwealth Edison Company	RF342–325
2/15/94	Elmo L. Sorrels	RC272–227
2/15/94	Husky Oil Company	RF304–15445
2/15/94	Husky Oil Company	RF304–15446
2/15/94	United AG Service, Inc.	RF272–95125
2/17/94	Biorite Oil Co., Inc.	RF300–21773
2/17/94	Frank & Leo's Auto Service	RF304–15447

[FR Doc. 94–5255 Filed 3–7–94; 8:45 am]
BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of December 6 through December 10, 1993

During the week of December 6 through December 10, 1993 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Eugene Maples, 12/08/93; LFA–0335

Eugene Maples filed an Appeal from a determination issued by the DOE's Chicago Operations Office (Chicago Operations) in response to a request from Mr. Maples under the Freedom of Information Act (FOIA). Mr. Maples sought documents concerning an Inspector General's audit entitled Selected Aspects of the State of South Carolina's Management of Petroleum Violation Escrow Settlement Funds. In considering the Appeal, the DOE found that Chicago Operations did not properly consider the public interest in disclosure of the responsive documents. Accordingly, the Appeal was granted and the determination remanded to Chicago Operations for a new determination.

Jon Berg, 12/06/93; LFA–0330

Jon Berg filed an Appeal from a partial denial by the DOE's Office of Inspector General of a Request for Information which he had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that some of the information that had initially been withheld under Exemptions 6 and 7 should have been released to the public. The DOE found that a more selective redaction would allow additional information to be released without revealing the identities of individuals. The DOE further found that this result was supported by an October 4, 1993 Memorandum for Heads of Departments and Agencies from Attorney General Janet Reno.

MSE, Incorporated, 12/06/93; LFA–0338

MSE, Inc., a government contractor, appealed a denial by the DOE's Office of Inspector General (OIG) of its request for documents pertaining to an OIG investigation into allegations that MSE engaged in improper activities. In considering the Appeal, the DOE found that the OIG's investigation was ongoing and that its claim of potential witness tampering was supported by a deposition from a former MSE employee (whistleblower) who maintained that MSE was likely to retaliate against witnesses. In view of the allegation of possible reprisals, the DOE found that the OIG properly withheld the requested documents pursuant to Exemption 7(A) and that release was not in the public interest so long as the risks from premature release remain unabated. Accordingly, MSE's Appeal was denied.

Westinghouse Hanford Company, 12/09/93; LFA–0336

Westinghouse Hanford Company (WHC) filed a Motion for Reconsideration of the DOE's September 24, 1993 Decision issued to the Hanford Education Action League (HEAL), which required the DOE's Richland Field Office (Richland) to release WHC Internal Audit Reports to HEAL under the Freedom of Information Act (FOIA). In considering the Motion, the DOE affirmed its September 24, 1993 determination that the Internal Audit Reports were not properly withheld under Exemption 4 and therefore should be released to the public. The central issue considered in the Decision and Order was whether the Internal Audit Reports were voluntarily submitted to the DOE. The DOE found that the audit reports were not "voluntarily" submitted and therefore applied the National Parks test instead of the Critical Mass test in order to determine whether the documents were "confidential" for the purposes of FOIA Exemption 4.

Motion for Discovery

Economic Regulatory Administration. 12/08/93; LRD–0010

The DOE's Economic Regulatory Administration (ERA) filed a Motion for Discovery pursuant to a Decision and Order issued by the DOE on August 24, 1993, in connection with a Proposed Remedial Order (PRO) proceeding, Case No. LRO–0004, involving Chevron U.S.A. Inc. (Hearing Order). In the Hearing Order, the DOE determined that an evidentiary hearing should be convened in order to more fully examine a factual issue presented in the PRO proceeding involving the amount of revenue actually received by Chevron as a result of its participation in the DOE Tertiary Incentive Program, 10 CFR 212.78, during the period January 1980 through January 27, 1981. In its Motion for Discovery, the ERA requested responses to interrogatories and production of documents, which it claimed are necessary in order to prepare adequately for the evidentiary hearing. In considering the discovery request, the DOE determined that a substantial portion of the information sought by the ERA is relevant and material, would likely add meaningfully to the ERA's cross-examination of the witnesses and, in any event, should be included in the record of the PRO proceeding. Accordingly, the ERA's Motion for Discovery was granted in part. In addition, the DOE determined that certain party intervenors in the PRO proceeding, *viz.* a group of Utilities, Transporters and Manufacturers, and a consortium of State governments, should be granted limited participation at the evidentiary hearing.

Refund Applications

Browning-Ferris, Inc., 12/07/93; RF272–56110, RD272–56110

The DOE issued a Decision and Order concerning an Application for Refund

filed by Browning-Ferris, Inc. (BFI), in the subpart V crude oil refund proceeding. The DOE determined that the refund claim be denied, because BFI's parent corporation, Browning-Ferris Industries, Inc., executed a Claim Form and Waiver in connection with the Surface Transporters Escrow proceeding. By executing the Claim Form and Waiver, Browning-Ferris Industries, Inc., waived its rights and those of its subsidiaries and affiliates, including BFI, to seek a refund in any subpart V proceedings, including the crude oil proceeding. Therefore, the DOE determined the BFI's right to seek a refund in the subpart V crude oil proceeding had been waived and DOE denied the BFI Application. In addition, a consortium of States and Territories of the United States (States) filed a Statement of Objections to the Application. The DOE did not consider the Objections because the Application was denied. The DOE dismissed as moot the Motion for Discovery filed by the States.

Eastman Kodak Co., 12/07/93; RF272–21246, RD272–21246

The DOE issued a Decision and Order granting an Application for Refund filed by Eastman Kodak Co., in the subpart V crude oil refund proceeding. The DOE determined that the refund claim was meritorious and granted a refund of $2,318,850. In granting the Application, the DOE determined that paraxylene, mineral oil and heptane were covered products eligible for a refund. The DOE also found that Kodak's presumption of end-user injury was rebutted with respect to its purchases of propane derived from natural gas. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury with respect to the remainder of the Application. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury.

Quintana Energy Corp./Texas Utilities Fuel Company, 12/06/93; RF332–11

Texas Utilities Fuel Company (TUFCO) submitted an Application for Refund in the Quintana Energy Corporation refund proceeding. The DOE determined that TUFCO was entitled to a refund of $155,179 under the presumption of injury for public utilities for Quintana product that it purchased and consumed. This refund was subject to reporting requirements and a dollar-for-dollar passthrough. With respect to Quintana product that it resold, the DOE found that the public utilities' presumption of injury does not apply. However, the DOE found that TUFCO had proved that it was injured with respect to Quintana product that it purchased and resold during the period February 1975 through June 1976. Accordingly, the DOE granted TUFCO an additional refund of $317,397 for this product. The total refund granted to TUFCO was $472,576.

Texaco Inc. A & W Texaco, 12/07/93; RR321–135

The DOE issued a Decision and Order denying a Motion for Reconsideration filed by Warren Valenta, the owner of A & W Texaco, in the Texaco Inc. special refund proceeding. In a Decision and Order issued on September 15, 1993, the DOE granted Mr. Valenta a refund of $2,243 based on fifty percent of A & W's allocable share from March 1973 through June 1978, the period during which Mr. Valenta operated the business as an equal partner, and one hundred percent of its allocable share for the remainder of the consent order period. In his Motion for Reconsideration, Mr. Valenta argued that because the July 1978 partnership dissolution agreement assigned all of A & W's assets, accounts receivable and liabilities to him, he should be entitled to the entirety of any refund granted for A & W's purchases prior to the dissolution agreement. Because the DOE distributes refunds in order to remedy the effects of alleged regulatory violations, it presumes that the owner or owners of businesses that purchased product from a consent order firm directly experienced the impact of any overcharges. The DOE found that Mr. Valenta had not submitted any evidence that challenged its presumption, or that demonstrated that Mr. Valenta's partner divested himself of the right to a refund.

Texaco Inc./Energy Sales, Inc., 12/10/93; RF321–19989

On November 18, 1993, the DOE issued a Decision and Order in the Texaco Inc. special refund proceeding concerning an Application for Refund filed by David Montgomery on behalf of Energy Sales, Inc. (ESI), a Texaco jobber. ESI is dissolved and Mr. Montgomery claimed to own 75 percent of its corporate stock at the time of dissolution. Accordingly, the DOE granted Mr. Montgomery 75 percent of ESI's refund. Subsequently, another individual informed DOE that he owns some of the ESI stock that Mr. Montgomery claims to own. Under these circumstances, the DOE found that the refund granted to Mr. Montgomery on behalf of ESI should be rescinded until the ownership of the firm can be clarified.

Texaco Inc./Vancouver Oil Co., 12/10/93; RF321–4174

The DOE issued a Decision and Order denying an Application for Refund filed on behalf of Vancouver Oil Co. in the Texaco Inc. special refund proceeding. The DOE found that the applicant, the "new" Vancouver Oil Co., purchased only specifically enumerated assets from the "old" Vancouver Oil Co., the entity in operation during the price control period. Since the applicant did not purchase the stock of the "old" Vancouver Oil Co., and a potential oil overcharge refund was not listed amongst the assets purchased, the DOE found that the applicant, Vancouver Oil Co., had not obtained the right to a refund from the original corporation and consequently was not entitled to a refund in the Texaco proceeding.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Andrew Southern	RC272–221	12/09/93
Atlantic Richfield Company/Frank Smets *et al*	RF304–14035	12/08/93
Atlantic Richfield Company/Regional Transit Service, Inc	RF304–15410	12/10/93
Atlantic Richfield Company/Superior Tire, Incorporated *et al*	RF304–14457	12/08/93
Browning-Ferris Industries of TN	RC272–219	12/10/93
Camp Hill School District *et al*	RF272–83055	12/09/93
Continental Cheese Co., Inc	RC272–220	12/09/93
E.I. Dupont De Nemours & Co., Inc.—Cape Fear Plant	RF272–91302	12/06/93
Farmers Co-op Oil Co	RF272–88686	12/10/93
Farmers Union Oil Co	RF272–88698	
Gulf Oil Corporation/Harry's Gulf	RF300–14351	12/06/93
Gulf Oil Corporation/Tiger Oil & Heating Company *et al*	RF300–21202	12/06/93

J. Blanton	RC272–222	12/10/93
Port Authority of New York and New Jersey	RF272–63670	12/09/93
Shell Oil Company/Andy Saberi	RF315–8435	12/06/93
Moffet Shell	RF315–8436	
Delaware Shell	RF315–8437	
Ralston Shell	RF315–8438	
Clark Shell	RF315–8439	
Folsom Shell	RF315–8440	
Bay Shell	RF315–8441	
Andy's Shell #1	RF315–8442	
Andy's Shell #1	RF315–8443	
St. Cabrini Nursing Home *et al*	RF272–90005	12/06/93
Texaco Inc./Callis Texaco *et al*	RF321–14591	12/09/93
Texaco Inc./College Texaco *et al*	RF321–18866	12/07/93
Texaco Inc./Sorrells Texaco *et al*	RF321–6517	12/10/93

Dismissals

The following submissions were dismissed:

Name	Case no
Apex Management	RF321–12883
Apex Management	RF321–12884
Delavan Darien School District.	RF272–81232
Duane's Texaco	RF321–16190
Earl L. Elliott Co., Inc	RF321–2586
Farris Texaco	RF321–3481
Gold Beach UHS District 001.	RF272–80721
Grubbs Texaco	RF321–16187
H&B Texaco Service #1	RF321–16317
H&B Texaco Service #2	RR321–77
H&B Texaco Service #3	RF321–16318
Holyoke School District	RF272–81663
Horton's Service Station	RF321–8500
Iuka Separate School District.	RF272–80066
John Massey Service Station.	RF321–8469
Karnack ISD	RF272–81261
Kirksville School District R–III.	RF272–80727
Lakeland School Corp	RF272–81353
Letchworth Central School—Gainesville.	RF272–81761
Lexington R-V School District.	RF272–81749
Lofton's Texaco	RF321–16185
Lynn School District	RF272–81661
Man's Texaco	RF321–16930
Mid-Continent Truck Stop	RF321–19082
Milton-Union Ex. Vill. School District.	RF272–81759
Orange Grove ISD	RF272–81230
Owens Cartage Company	RF321–15587
Roanoke County Public Schools.	RF272–81617
Roseland Elementary	RF272–81568
Sach's Texaco	RF321–16931
Simpson County Schools	RF272–81685
Sujdak's Bottled Gas Co	RF272–91509
Uinta County School District No 4.	RF272–81373
Whitener Gulf Service	RF300–15821

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: March 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–5256 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of January 10 Through January 14, 1994

During the week of January 10 through January 14, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Marlene Flor, 1/11/94; LFA–0343

Marlene Flor (Flor) filed an Appeal from a determination issued to her by the Albuquerque Field Office (AFO) of the Department of Energy (DOE). The determination denied a Request for Information which Flor submitted under the Freedom of Information Act. Flor requested a three page document allegedly transmitted with a facsimile cover sheet dated April 22, 1992. Additionally, Flor requested a copy of any analyses which had been created regarding an anonymous letter the Personnel Security Operations Division of the AFO received on or about April 12, 1991. In its determination letter, the AFO stated that it could not find any document which may have been attached to the facsimile cover sheet. Additionally, the AFO stated that only one analysis had been created regarding the anonymous letter and it had already been provided to Flor. In considering the Appeal, the DOE found that an adequate search had been conducted in response to Flor's request. Accordingly, Flor's Appeal was denied.

Implementation of Special Refund Procedures

A–1 Exxon, Half-Moon Bay Exxon, Redhill Mobil & Towing, 1/13/94; LEF–0086, LEF–0087, LER–0088

The DOE issued a Decision and Order implementing special refund procedures to distribute $10,089.18, plus interest, which A–1 Exxon, Half-Moon Bay Exxon, and Redhill Mobil & Towing (the remedial order firms) remitted to the DOE pursuant to March 8, 1982 (for A–1 Exxon and Half-Moon Bay Exxon) and March 29, 1982 for Redhill Mobil & Towing) Remedial Orders. The DOE determined that it would distribute the fund in two stages. In the first stage, the DOE will accept applications for refund from those claiming injury as a result of the remedial order firms' violations of Federal petroleum pricing regulations. If any funds remain after meritorious claims are paid in the first stage, they will be used for indirect restitution through the States in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986.

Buchanan Shell, Inc., Jim Campbell Shell, Miles Union Service, Elwood Chevron Service, 1/13/94; LEF–0081, LEF–0082, LEF–0083, LEF–0085

The DOE issued a Decision and Order implementing special refund procedures to distribute $5,784.33, plus accrued interest, which Buchanan Shell, Inc., Jim Campbell Shell, Miles Union Service, and Elwood Chevron Service (the consenting firms) remitted to the DOE pursuant to settlements reached on August 25, 1982, August 2, 1982, April 11, 1982, and March 25, 1992, respectively. The DOE determined that it would distribute the funds in two stages. In the first stage, the DOE will accept applications for refund from those claiming injury as a result of the consenting firms' alleged violations of

Federal petroleum pricing regulations. If any funds remain after meritorious claims are paid in the first stage, they will be used for indirect restitution through the States in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986.

Refund Applications

Clark/Tri-Par Oil Co. Inc., 1/12/94; RF342–8

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Tri-Par Oil Co., Inc., (Tri-Par) in the Apex Oil Co./Clark Oil & Refining Corp. (Clark) special refund proceeding. Tri-Par was an independent retailer/seller of refined petroleum products and an occasional purchaser of Clark products during the refund period. Tri-Par was initially identified as a spot purchaser due to its sporadic purchases of Clark product. However, Tri-Par submitted additional evidence to show that it had consistently purchased gasoline from three primary suppliers, one of which was Clark. Tri-Par experienced difficulty in obtaining petroleum products, and for much of the refund period limited gasoline sales to its base period customers. In 14 of the 19 months when Tri-Par relied on Clark supplies, Clark's prices were, on average, 18.4% higher than those of the other suppliers. These factors indicated that Tri-Par did not make selective, discretionary purchases from Clark on the spot market. Tri-Par was considered a regular purchaser of Clark gasoline during the period from August 1973 to June 1976. Accordingly, Tri-Par was granted a principal refund of $1,207. However, the DOE received no evidence that the distillates which Tri-Par obtained from Clark were not purchased on a spot or discretionary basis. Thus, the DOE did not grant Tri-Par a refund for those purchases.

Texaco Inc./Ciruli Oil Company, 1/13/94; RR321–11

The DOE issued a Decision and Order concerning a Motion for Reconderation filed Ciruli Oil Company. The DOE had previously denied two duplicate Applications for Refund filed by the firm, because its owner, Mr. Ciruli, had wrongly stated on one application that he had not filed any other application in the Texaco proceeding. The DOE found that Mr. Ciruli was confused by the multiple application forms that he had received from two filing services. The DOE concluded that he did not intend to file duplicate applications. Consequently, the DOE granted the Motions for Reconsideration and approved a refund.

Texaco Inc./State Oil Company, 1/13/94; RF321–8105, RF321–8106

The DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning two Applications for Refund filed by State Oil Company on behalf of two Texaco retail outlets that it operated. Both of these outlets purchased Texaco products indirectly through Texaco jobbers. One outlet purchased from McWhirter Distributing (McWhirter) and the other from Cook & Cooley, Inc. (C&C). The DOE explained that where the supplier who purchased directly from Texaco has not demonstrated that it absorbed any of the Texaco overcharges, customers of that supplier are entitled to refunds under the procedures used for direct purchasers. The DOE noted that McWhirter did not claim to have absorbed Texaco's overcharges in its refund application. Accordingly, the DOE granted a refund to the outlet supplied by McWhirter based upon that outlet's full purchase volume from that supplier.

C&C in its refund application had demonstrated that it absorbed all of Texaco's overcharges for its purchases of premium and unleaded gasoline, and 58 percent of its purchases of regular gasoline. Accordingly, the DOE found that the outlet which purchased from C&C was entitled only to a refund based upon 42 percent of its regular gasoline purchases.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Brenfleck Fuel Co. *et al*	RF304–13741 ...	01/13/94
Atlantic Richfield Company/Lew & Ben's Arco Service *et al*	RF304–4888	01/13/94
Central A & M Community Unit District	RF272–79514 ...	01/12/94
Central Motor Express, Inc	RF272–75995 ...	01/10/94
Farmers Cooperative Co. *et al*	RF272–91283 ...	01/14/94
Gulf Oil Corporation/Bergeron Oil Service, Inc *et al*	RF300–19550 ...	01/10/94
Gulf Oil Corporation/C.J. Meade & Sons, Inc	RF300–18470 ...	01/12/94
Gulf Oil Corporation/Carolina Mills, Inc *et al*	RF300–20020 ...	01/13/94
Gulf Oil Corporation/Ramco Oil Co., Inc	RF300–20719 ...	01/14/94
Town & Country Service Station Inc	RF300–20902 ...	.....
Gulf Oil Corporation/Val Cap, Inc	RF300–20693 ...	01/12/94
John Swett Unified School District *et al*	RF272–80630 ...	01/14/94
Knott County Board of Educa. Elgin Local School District	RF272–79433, RF272–83294.	01/14/94
New Bedford Seafood Co-Operative Assoc., Inc	RF272–87692 ...	01/11/94
Oneida County, New York *et al*	RF272–77310 ...	01/14/94
Prather's Linen & Uniform Service	RC272–223	01/11/94
Preble-Shawnee Local School District	RF272–83361 ...	01/10/94
Shell Oil Company/301 Shell	RF315–8780	01/14/94
Shell Oil Company/Airport Terminal Services, Inc	RF315–9408	01/14/94
Midcoast Aviation, Inc	RF315–9418	.....
Shell Oil Company/Red Carpet Car Wash	RF315–10003 ...	01/11/94
St. Peter's Church and School	RC272–224	01/14/94
Texaco Inc./Chandler & Martin Texaco	RF321–18934 ...	01/14/94
Texaco Inc./Phil's Texaco Service *et al*	RF321–14207 ...	01/14/94
The Transport Co. of Texas *et al*	RF272–80029 ...	01/11/94
Village of Milford, Michigan *et al*	RF272–88157 ...	01/10/94
Whirlpool Corporation	RR272–119	01/11/94

DISMISSALS

The following submissions were dismissed:

Name	Case No.
Allenstown School District	RF272–81612
Allied Supermarkets	RF321–5517
Beacon Distributing of Tulare County.	RF238–137
Beacon Merced	RF238–130
Blackburn Service Station	RF321–17982
Carsonville-Port Sanilac SD.	RF272–80389
Cedar Grove-Belgium Area Schools.	RF272–83556
Chinigois Service	RF321–17976
Commodity Warehouse	RF321–16092
Dollarway School District	RF272–81348
Duke & Lee's	RF321–17831
Dunn's Texaco	RF321–14279
Esser's Texaco	RF321–17979
Francis Sales & Service	RF315–309
Funari Texaco Service	RF321–17986
Harrod Concrete & Stone Co.	RF272–91429
Heard Texaco	RF321–14667
Ideal Basic Industries	RF321–5535
Kautzman Service	RF321–17978
Koenig Company	RF272–91430
Lafourche Parish School Board.	RF272–81486
Lew's Arco	RR304–61
Milne-Kelvin Grove School District 91.	RF272–81713
Mountain Gulf	RF300–14218
Nabors Texaco Service	RF321–17991
Necanicum Truck Stop	RF321–14603
North Jensen Texaco	RF321–14800
Oak Park Elementary School District 97.	RF272–83354
Ollie R. Brest Texaco	RF321–5579
One Stop Gulf	RF300–19396
Orlando Perea	RF321–13791
Randall Bros	RF300–19127
Redding Petroleum, Inc	RF238–131
Romarco Corp	RF272–91326
Salami's Truck Center	RF321–17995
Salyer Texaco	RF321–13814
Sedalia Texaco & Grocery	RF321–17977
Tri-Service Company, Inc	RF300–14317
Wenona Community Unit School District 1.	RF272–81734
Yachats Texaco	RF321–19992

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: March 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–5261 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders; Week of January 17 Through January 21, 1994

During the week of January 17 through January 21, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Deborah L. Abrahamson, 1/21/94, LFA–0344

Deborah L. Abrahamson filed an Appeal from a determination issued by the Office of Personnel in response to the remand from this Office of an Appeal which Ms. Abrahamson had submitted under the Freedom of Information Act (FOIA). In that determination, the Office of Personnel released some documents and withheld one document pertaining to the position of Management Analyst at the Superconducting Super Collider Project Office (SSCPO), a position for which she had been a candidate. Further, the Office of Personnel withheld a portion of one document. In addition, Ms. Abrahamson questioned the adequacy of the Office of Personnel's search for information, claiming that additional information should exist. The DOE determined that the Office of Personnel's withholding of the one document in full on the basis of Exemption 5 of the FOIA was proper. The DOE also determined that the portion of the other document that was withheld was not responsive to Ms. Abrahamson's request and, therefore, properly withheld. Finally, the DOE determined that the Office of Personnel's search was reasonably calculated to uncover any information requested by Ms. Abrahamson. Therefore, the Appeal was denied.

Refund Applications

Northeast Petroleum Industries/ Massachusetts, 1/13/94, RM25–264

The DOE issued a Decision and Order approving a Motion for Modification of a previously-approved second-stage refund plan filed by the Commonwealth of Massachusetts (Massachusetts). In its Motion, Massachusetts requested the authority to use $30,000 of its uncommitted Northeast Petroleum Industries second-stage refund monies to fund a pair of projects intended to expand the use of alternatives fuels in the Commonwealth. The DOE affirmed the timely restitutionary benefits of the plan to promote alternative fuel use. The DOE also identified the proposed recipients of those benefits (the people of Massachusetts) as a substantial segment of injured consumers of refined petroleum products. The Massachusetts plan was thus found to satisfy the criteria for a second-stage refund restitutionary program. Accordingly, Massachusetts's Motion for Modification was approved.

Texaco, Inc./Poweram Oil Company, Inc., 1/19/94, RF321–14580

The DOE issued a Decision and Order granting an Application for Refund filed by Poweram Oil Company, Inc. (Poweram) in the Texaco Inc. special refund proceeding. Poweram sought a refund equal to its full allocable share for its purchases of Texaco motor gasoline and middle distillates. In support of its claim of injury above the medium-range presumption level, the firm submitted information showing the status of its cumulative banked gasoline and middle distillate costs at the end of the respective "banking" regulation periods, and a competitive disadvantage analysis for its Texaco purchases of each grade of motor gasoline and for middle distillates. The data submitted showed that Poweram had accumulated sufficient banks from September 1975 to April 1980 for motor gasoline and from January 1975 to June 1976 for middle distillates to justify a full volumetric refund for those periods, and that the firm experienced a substantial competitive disadvantage as a result of its Texaco purchases. The DOE also determined that Poweram was entitled to a refund based on its motor gasoline purchases from April 1980 through January 1981, its regular motor gasoline purchases in March 1973, its premium motor gasoline purchases in March, April, May and September 1973, and its middle distillate purchases in March and April 1973. The total refund amount granted was $172,932 ($125,340 principal and $47,592 interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Lakeland School Corporation	RR272–122	01/21/94
Lithium Corporation of America	RF272–23095	01/21/94
Lithium Corporation of America	RD272–23095	
Milford Central School	RC272–225	01/21/94
New Richmond School District	RA272–56	01/21/94
Texaco Inc./Stephen Beagley *et al*	RF321–6523	01/21/94
Texaco Inc./Transportation Supplies, Inc	RF321–14700	01/21/94
Transportation Supplies, Inc	RF321–17372	
Webster County *et al*	RF272–87652	01/21/94

Dismissals

The following submissions were dismissed:

Name	Case No.
Riverview School District ...	RF272–80002

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: March 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–5309 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders; the Office of Hearings and Appeals Week of January 24 through January 28, 1994

During the week of January 24 through January 28, 1994, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

John W. Osenbaugh, 1/27/94, LFA–0346

John W. Osenbaugh filed an Appeal from a determination issued by the National Renewable Energy Laboratory Area Office (NREL) of the Department of Energy in response to a request from Mr. Osenbaugh under the Freedom of Information Act (FOIA). Mr. Osenbaugh sought documents concerning the production of fuel from switchgrass. In considering the Appeal, the DOE found that NREL performed an adequate search for relevant documents, did not withhold under Exemption 4 cost and pricing information for switchgrass, and met the requirements of 10 CFR § 1004.5(b)(5). Accordingly, the Appeal was denied in all respects.

Ron Vader, 1/27/94, LFA–0347

Ron Vader filed an Appeal from a determination issued by the Richland Field Office (Richland) in response to a request for information that he submitted under the Freedom of Information Act (FOIA). Mr. Vader requested information concerning a "hearing" held regarding the accidental entrance of several Walla Walla University students, including Mr. Vader, onto DOE's Hanford site in December 1976. In its determination, Richland concluded that it did not have information responsive to Mr. Vader's request. Mr. Vader appealed, claiming that the search that Richland conducted was inadequate and Richland must have some record of the hearing about which he was requesting information. The DOE determined that the search was adequate and that any information Richland may have had would have been destroyed pursuant to the Records Inventory and Disposition Schedule. Therefore, the Appeal was denied.

Taylor, Newsome, Tinkham & Cole, P.C., 1/27/94, LFA–0345

Taylor, Newsome, Tinkham & Cole, P.C. (Taylor), filed an Appeal from a determination issued by the Oak Ridge Field Office (Oak Ridge) in response to a request for information Taylor submitted under the Freedom of Information Act (FOIA). Taylor sought information concerning contracts awarded to Research Triangle Institute, including agreements entered into by Martin Marietta Energy Systems, Inc. (MMES) on behalf of the DOE. In its determination, Oak Ridge concluded that it did not have information responsive to Taylor's request and anything that may have been held by MMES would not be agency documents and therefore not within the scope of the FOIA. Taylor appealed, claiming that the search Oak Ridge conducted was inadequate and that the provision in the contract between MMES and DOE that stated that all procurement documents were the property of MMES violated 5 U.S.C. § 552. The DOE determined that the search was adequate and the validity of the contract provision that Taylor was questioning was outside the jurisdiction of a FOIA Appeal. Therefore, the Appeal was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Arkla, Inc	RF272–28017	01/26/94
Atlantic Richfield Company/Broadway ARCO *et al*	RF304–14295	01/25/94
Atlantic Richfield Company/City of Bell Gardens *et al*	RF304–14212	01/25/94
Beacon Oil Company	RF272–93025	01/27/94
Duffie Monroe & Sons Company	RF272–93026	
Beacon Oil Company/Ernie's Beacon	RF238–148	01/27/94
Beacon Oil Company/Steve's Beacon Service	RF238–149	01/25/94
Bukovatz 66	RF272–90942	01/25/94
Gateway School District *et al*	RF272–80652	01/25/94
Gulf Oil Corporation/Cornell Young Co	RF300–19291	01/27/94
Gulf Oil Corporation/Harold's Gulf, Inc	RF300–15267	01/27/94
Harold's Gulf, Inc	RF300–16373	
Gulf Oil Corporation/Ottawa Oil Company	RF300–19924	01/27/94
Gulf Oil Corporation/Wexwell Corporation	RF300–20086	01/25/94
Wexwell Corporation	RF300–21769	

Wexwell Corporation	RF300–21770	
R.J. Glass, Inc	RF272–77610	01/25/94
Shell Oil Company/Arrow Transportation Company	RF315–10102	01/26/94
Shell Oil Company/Union Oil Co. of California	RF315–9175	01/26/94
Texaco Inc./Ellis Robertson Corporation	RR321–50	01/25/94
Ellis Robertson Co., Inc	RF321–14027	
Ellis Robertson Co., Inc	RF321–14028	
Ellis Robertson Co., Inc	RF321–14029	
Texaco Inc./Roebuck Plaza Texaco *et al*	RF321–15838	01/25/94
Texaco Inc./Rollins Oil Co. *et al*	RF321–10530	01/25/94

Dismissals

The following submissions were dismissed:

Name	Case No.
City of Fontana	RF272–85367
City of Henderson, TN	RF272–85295
Clinton County	RF272–85292
Fredonia Texaco	RF321–18681
Hickory County	RF272–85316
John Smith Texaco	RF321–18641
New Castle Area School District.	RF272–80018
Steve's Get & Go Market	RF238–124
Vickery's Texaco	RF321–8447

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: March 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–5310 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces procedures for the disbursement of $17,816.72, plus accrued interest, in crude oil price violation amounts obtained by the DOE pursuant to a Remedial Order issued on April 3, 1980, to Warwick Oil Corporation (Case No. LEF–0117). The OHA has determined that the funds obtained from the remedial order firm, plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases. Accordingly, 40 percent of the funds will be remitted to the federal government, another 40 percent to the states, and 20 percent will be initially reserved for the payment of claims by injured parties.

DATE AND ADDRESS: Applications for Refund from the crude oil funds should be clearly labeled "Application for Crude Oil Refunds" and should be mailed to subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Applications for Refund must be filed in duplicate no later than June 30, 1994. Any party who has previously filed an Application for Refund should not file another Application for Refund from the present crude oil funds. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the procedures are finalized.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute $17,816.72, plus accrued interest, obtained by the DOE pursuant to a Remedial Order issued to Warwick Oil Corporation (Warwick) on April 3, 1980. In the Remedial Order, the DOE found that, during the period January 1976 through November 1977 Warwick charged prices for crude oil which exceeded the maximum prices that the firm was permitted to charge under Federal petroleum price regulations.

The OHA has determined to distribute the funds obtained from Warwick in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement. *In re: The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (Stripper Well Settlement Agreement). In accordance with the MSRP, the OHA has determined that 80 percent of the Warwick crude oil overcharge amounts, plus accrued interest, will be disbursed in equal shares to the states and the federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

Also under the terms of the MSRP, the DOE has determined that the remaining 20 percent of the Warwick crude oil overcharge funds will be initially reserved for the payment of claims by injured parties. The specific requirements which an injured party must meet in order to receive a refund are set out in section III of the Decision. Claimants who meet these specific requirements will be eligible to receive their share of all available crude oil overcharge funds based on the number of gallons of covered petroleum products which they purchased during the price control period.

Applications for Refund must be postmarked no later than June 30, 1994. As stated in the Decision, any party who has previously submitted a refund application in the crude oil refund proceedings should not file another application for refund in the crude oil proceedings. The previously filed crude oil application will be deemed filed in all crude oil proceedings as the procedures are finalized.

Dated: March 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

March 1, 1994.

Name of Firm: Warwick Oil Corp.
Date of Filing: November 16, 1993.
Case Number: LEF–0117.

On November 16, 1993, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) to distribute the funds received pursuant to a Remedial Order issued by the DOE to Warwick Oil Corporation (Warwick), a crude oil producer. In accordance with the provisions of the procedural regulations at 10 CFR part 205, subpart V (subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations described in the Remedial Order. This Decision and Order sets forth the OHA's plan to distribute these remedial order funds.

I. Background

The DOE issued a Remedial Order to Warwick on April 3, 1980, concluding that the firm had violated the Federal petroleum price regulations in its sales of crude oil from the Hanks Company lease at prices that exceeded maximum lawful prices. Warwick has since remitted $17,816.72 in compliance with the Remedial Order, to which interest has subsequently accrued. These funds continue to be held in an interest-bearing escrow account maintained at the Department of the Treasury.

II. Jurisdiction and Authority

The subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan for the distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds. See Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501–4507, *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

We have considered the ERA's petition that we implement subpart V proceedings with respect to the Warwick remedial order funds and have determined that such proceedings are appropriate. This Decision and Order sets forth the OHA's plan to distribute those funds.

III. Refund Procedures

On December 15, 1993, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the remedial order funds. That PD&O was published in the Federal Register, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 58 FR 67405 (December 21, 1993). More than 30 days have elapsed and the OHA has received no substantive comments concerning the proposed procedures for the distribution of the remedial order funds. Consequently, the procedures will be adopted as proposed.

A. Crude Oil Refund Policy

The funds obtained pursuant to the Warwick Remedial Order should therefore be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (MSRP). The MSRP was issued as a result of a court-approved Settlement Agreement *In re: The Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan.), 6 Fed. Energy Guidelines ¶ 90,509 (1986) (Stripper Well Settlement Agreement). The MSRP establishes that 40 percent of the crude oil overcharge funds will be remitted to the federal government, another 40 percent to the states, and up to 20 percent may be initially reserved for the payment of claims by injured parties. The MSRP also specifies that any monies remaining after all valid claims by injured purchasers are paid be disbursed to the federal government and the states in equal amounts.

The OHA has utilized the MSRP in all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). This Order provided a period of 30 days for the filing of comments or objections to our proposed use of the MSRP as the groundwork for evaluating claims in crude oil refund proceedings. Following this period, the OHA issued a notice evaluating the numerous comments which it received pursuant to the Order Implementing the MSRP. This notice was published at 52 FR 11737 (April 10, 1987) (April 10 Notice).

The April 10 notice contained guidance to assist potential claimants wishing to file refund applications for crude oil monies under the subpart V regulations. Generally, all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973, through January 27, 1981, crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. We also specified that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have been injured by the alleged crude oil overcharges and need not submit any additional proof of injury beyond documentation of their purchase volumes. See, *e.g.*, *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell*); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*).

B. Refund Claims

These standard crude oil refund procedures will be used to distribute the monies in the Warwick Remedial Order fund. We have chosen to initially reserve 20 percent of the fund, plus accrued interest, for direct refunds to claimants in order to ensure that sufficient funds will be available for injured parties. This reserve figure may later be reduced if circumstances warrant.

The OHA will evaluate crude oil refunds in a manner similar to that used in subpart V proceedings to evaluate claims based on alleged refined product overcharges. See *Mountain Fuel*, 14 DOE at 88,869. Under these procedures, claimants will be required to document their purchase volumes of petroleum products and prove that they were injured as a result of the violations.

We will adopt a presumption that the crude oil overcharges were absorbed, rather than passed on, by applicants which were (1) end-users of petroleum products, (2) unrelated to the petroleum industry, and (3) not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h. In order to receive a refund, end-user claimants need not submit any evidence of injury beyond documentation of their purchase volumes. See Shell, 17 DOE at 88,406.

Petroleum retailer, reseller, and refiner applicants must submit detailed evidence of injury, and they may not rely upon the injury presumptions utilized in some refined product refund cases. *Id.* These applicants may, however, use econometric evidence of the type found in the *OHA Report on Stripper Well Overcharges*, 6 Fed. Energy Guidelines ¶ 90,507 (1985). See also Petroleum Overcharge Distribution and Restitution Act 3003(b)(2), 15

U.S.C. § 4502(b)(2). If a claimant has executed and submitted a valid waiver pursuant to one of the escrows established by the Stripper Well Settlement Agreement, it has waived its rights to file an application for subpart V crude oil refund monies. See *Mid-America Dairymen* v. *Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App.), 3 Fed. Energy Guidelines ¶ 26,617 (1989); *In re: Department of Energy Stripper Well Exemption Litigation*, 707 F. Supp. 1267 (D. Kan.), 3 Fed. Energy Guidelines ¶ 26,613 (1987).

As has been stated in prior Decisions, a crude oil refund applicant will only be required to submit one application for its share of all available crude oil overcharge funds. See, e.g., *A. Tarricone, Inc.*, 15 DOE ¶ 85495 (1987). A party that has already submitted a claim in any other crude oil refund proceeding implemented by the DOE need not file another claim. The prior application will be deemed to be filed in all crude oil refund proceedings finalized to date. The DOE has established June 30, 1994, as the current deadline for filing an Application for Refund from the crude oil funds. *Quintana Energy Corp.*, 21 DOE ¶ 85,032 (1991). It is the policy of the DOE to pay all crude oil refund claims at the rate of $.0008 per gallon. While we anticipate that applicants that filed their claims before June 30, 1988, will receive a supplemental refund payment, we will decide in the future whether claimants that filed later applications should receive additional refunds. See, e.g., *Seneca Oil Co.*, 21 DOE ¶ 85,327 (1991). Notice of any additional amounts available in the future will be published in the **Federal Register**.

C. Payments to the Federal Government and the States

Under the terms of the MSRP, we have determined that the remaining 80 percent of the crude oil overcharge amounts subject to this Decision, plus accrued interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in exhibit H of the Stripper Well Settlement Agreement, 6 Fed. Energy Guidelines ¶ 90,509 at 90,687. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Settlement Agreement.

It Is Therefore Ordered That:

(1) Applications for Refund from the crude oil overcharge funds remitted by Warwick Oil Corporation may now be filed.

(2) All Applications submitted pursuant to Paragraph (1) above must be filed in duplicate and postmarked no later than June 30, 1994.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $17,816.72 (plus interest) from the Warwick Oil Corporation subaccount (Account Number 640C00375Z), pursuant to Paragraphs (4), (5), and (6) of this Decision.

(4) The Director of Special Accounts and Payroll shall transfer $7,126.69 (plus interest) of the funds obtained pursuant to Paragraph (3) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer $7,126.69 (plus interest) of the funds obtained pursuant to Paragraph (3) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $3,563.34 (plus interest) of the funds obtained pursuant to Paragraph (3) above, into the subaccount denominated "Crude Tracking-Claimants 4," Number 999DOE010Z.

Dated: March 1, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–5311 Filed 3–7–94; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

February 25, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0049.

Title: Restricted Radiotelephone Operator Permit and Temporary Restricted Radiotelephone Operator Permit.

Form Number : FCC Form 753.

Action: Extension of currently approved collection.

Respondents: Individuals or households.

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 65,000 responses; 0.33 hours average burden per response; 21,450 hours total annual burden.

Needs and Uses: Applicants must possess certain qualifications in order to qualify for a radio operator license. The data submitted on FCC Form 753 aids the Commission in determining whether the applicant possesses these qualifications. The data will be used to identify the individuals to whom the license is issued and to confirm that the individual possesses the required qualifications of the license. If the data were not collected, it would be impossible to identify the person to whom the license were issued nor to determine whether that person possessed the qualifications required for the issuance of the license.

OMB Number: 3060–0127

Title: Assignment of Authorization.

Form Number : FCC Form 1046.

Action: Extension of a currently approved collection.

Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 6,000 responses; 0.83 hours average burden per response; 498 hours total annual burden.

Needs and Uses: In accordance with FCC rules, to assign authorization of radio station to another entity, the assignor must in writing, assign all right, title and interest of the authorization to the other entity. The Commission uses the data to determine if assignment of authorization submitted with the application will meet the rule requirements for issuance of a station authorization.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 94–5230 Filed 3–7–94; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before May 9, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2602.

Type: Extension of 3067–0024.

Title: General Admissions Application and National Fire Academy Roster of Course Completion.

Abstract: NFA and EMI use FEMA Form 75–5, General Admissions Application, to admit applicants to courses and programs offered at NETC. Applicants complete FEMA Form 75–5 and send it to the Office of Admissions. The application is used by NETC personnel to determine eligibility for courses and program offered by NFA or EMI. Information from the application is maintained in the Student Record System.

FEMA Form 75–9, National Fire Academy Roster of Course Completion, is used to admit applicants to NFA off-campus courses. Because applications to off-campus courses are handled by the State and local sponsoring agency, the amount of information required on the General Admissions Application is not needed. Academy Roster of Course Completion, is used and filled in when the class is conducted. If FEMA Form 75–9 were not used, there would be no central record of attendance information for NFA off-campus courses.

Type of Respondents: Individual or households, State or local governments, Federal agencies or employees, Non-profit institutions.

Estimate of Total Annual Reporting and Recordkeeping Burden: 5,700 hours.

Number of Respondents: Application—33,000; Roster—15,000.

Estimated Average Burden Time per Response: Application—9 minutes; Roster—3 minutes.

Frequency of Response: Other—Each time a student applies to an NFA or EMI course.

Dated: February 25, 1994.
Wesley C. Moore,
Director, Administrative Services Division.
[FR Doc. 94–5244 Filed 3–7–94; 8:45 am]
BILLING CODE 6718–01–M

[FEMA–1011–DR]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1011–DR), dated February 28, 1994, and related determinations.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 28, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) as follows:

I have determined that the damage in certain areas of the State of Arkansas, resulting from a severe winter ice storm on February 9–10, 1994, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Individual Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Leland Wilson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared major disaster:

Ashley, Bradley, Calhoun, Chicot, Cleveland, Columbia, Desha, Drew, Lee, Lincoln, Monroe, Ouachita and Phillips Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,
Director.
[FR Doc. 94–5245 Filed 3–7–94; 8:45 am]
BILLING CODE 6718–02–M

[FEMA–1012–DR]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1012–DR), dated February 28, 1994, and related determinations.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 28, 1994, the President declared a major disaster under the authority of the Robert T. Stafford

Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from a severe winter ice storm on February 10–12, 1994, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Disaster Unemployment Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Dell Greer of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster:

Bienville, Claiborne, Lincoln, Union, and Webster Parishes for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director

[FR Doc. 94–5246 Filed 3–7–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1010–DR]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1010–DR), dated February 28, 1994, and related determinations.

EFFECTIVE DATE: February 28, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 28, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Tennessee, resulting from a severe winter ice storm and flash flooding on February 9–11, 1994, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Melvin J. Schneider of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

Bedford, Benton, Bledsoe, Bradley, Campbell, Cannon, Carroll, Cheatham, Chester, Clay, Coffee, Crockett, Cumberland, Davidson, Decatur, DeKalb, Dickson, Fayette, Fentress, Franklin, Gibson, Giles, Grundy, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Jackson, Lauderdale, Lawrence, Lewis, Lincoln, Macon, Madison, Marshall, Maury, McMinn, McNairy, Meigs, Montgomery, Moore, Morgan, Overton, Perry, Pickett, Polk, Putnam, Robertson, Rutherford, Scott, Sequatchie, Shelby, Smith, Stewart, Sumner, Tipton, Trousdale, Van Buren, Warren, Wayne, Weakley, White, Williamson, and Wilson Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 94–5247 Filed 3–7–94; 8:45 am]

BILLING CODE 6718–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee and Subcommittee on Proficiency Testing, Quality Assurance, and Quality Control; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings:

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates: 1 p.m.–5 p.m., March 23, 1994. 8:30 a.m.–12:30 p.m., March 24, 1994.

Place: CDC, Auditorium B, Building 2, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services and the Assistant Secretary for Health regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include a summary of the December meeting, a summary of the meeting of the Subcommittee on Proficiency Testing, Quality Assurance, and Quality Control, an Update on CLIA implementation, and discussion of CLIA information and education plans, and discussion of the status of the Accurate and Precise Testing Subcategory. Agenda items are subject to change as priorities dictate.

Name: Subcommittee on Proficiency Testing, Quality Assurance, and Quality Control.

Time and Date: 8:30 a.m.–12 noon, March 23, 1994.

Place: CDC, Auditorium B, Building 2, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will advise CLIAC on issues related to proficiency testing, quality assurance, and quality control.

Matters To Be Discussed: The subcommittee will discuss the following

proficiency testing sample grading issues: the use of peer group versus referee results to determine target values; and the 80 percent versus 90 percent consensus to determine gradability of proficiency testing samples. Agenda items are subject to change as priorities dictate.

Interested parties are encouraged to make an oral presentation to the subcommittee regarding the use of peer group versus referee results to determine target values and the 80 percent versus 90 percent consensus to determine gradability of proficiency testing samples. Requests should be submitted in writing to the contact person listed below by close of business, March 15, 1994. The request should include the name, address, and telephone number of the participant; the approximate time needed; and an indication of which of the issues will be addressed. Depending on the number of requests, up to 10 minutes will be allowed for each oral presentation.

Contact Person for Additional Information: John C. Ridderhof, Dr. P.H., Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE., Mailstop G–25, Atlanta, Georgia 30341–3724, telephone 404/488–7660.

Dated: March 2, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–5237 Filed 3–7–94, 8:45 am]

BILLING CODE 4163–18–M

Advisory Committee for Injury Prevention and Control; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announced the following committee meeting.

Name: Advisory Committee for Injury Prevention and Control (ACIPC).

Times and Dates: 9 a.m.–5 p.m., March 28, 1994. 8:30 a.m.–4:30 p.m., March 29, 1994.

Place: Swissôtel Atlanta, 3391 Peachtree Road, NE., Atlanta, Georgia 30326.

Status: Closed 9 a.m.–1:30 p.m., March 28; Open 1:30 p.m.–5 p.m., March 28; Open 8:30 a.m.–4:30 p.m., March 29.

Purpose: The committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the implementation of a national plan for injury prevention and control, the development of new technologies and their application; and review progress toward injury prevention and control.

Matters To Be Discussed: This meeting will convene in closed session from 9 a.m. to 1:30 p.m. on March 28, 1994. The purpose of this closed session is for the Science and Program Review Work Group to consider injury control research grant applications recommended for further consideration by CDC's Injury Research Grant Review Committee. The full committee will then vote on a funding recommendation. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Policy Coordination, CDC, pursuant to Public Law 92–463. Following the closed session, the full committee will discuss updates from the National Center for Injury Prevention and Control (NCIPC) and other federal agencies, the prevention of bicycle-related head injuries, and how we can work together to prevent bicycle head injuries.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Richard J. Waxweiler, Ph.D., Acting Executive Secretary, ACIPC National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE., Mailstop F–41, Atlanta, Georgia 30341–3724, telephone 404/488–4031.

Dated: March 2, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–5238 Filed 3–7–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

Advisory Committee Meeting; Postponement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is postponing the meeting of the Food Advisory Committee scheduled for March 9 and 10, 1994. The meeting was announced by a notice in the **Federal Register** of March 1, 1994 (59 FR 9760). FDA plans to reschedule this meeting.

FOR FURTHER INFORMATION CONTACT: Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFS–5), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4727.

Dated: March 3, 1994.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 94–5337 Filed 3–4–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the General Counsel

[Docket No. D–94–1054; FR–3675–D–01]

Redelegation of Authority

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: This notice implements the reorganization of the Department of Housing and Urban Development (HUD) field structure for the Office of General Counsel. First, this notice changes the titles of each of the ten Regional Counsels to Assistant General Counsel for the new geographical areas established under the reorganization to which the Assistant is assigned. All redelegations of authority now in effect to HUD Regional Counsel published in the Federal Register are modified to read Assistant General Counsel for the relevant geographical area. Second, this notice provides that each Assistant General Counsel for the new geographical areas will be selected by, will report directly to, and his or her performance will be evaluated by the General Counsel or designee, subject to the implementation of the joint labor/management recommendations of the Reorganization Task Force. The Chief Counsel and Chief Attorneys in each field office will report to and their performance will be evaluated by the Assistant General Counsel for the geographical area. The Assistant General Counsel for the geographical area will assist in setting priorities for Chief Counsel and Chief Attorneys in the area. Finally, this notice redelegates to the Assistant General Counsel for each geographical area several authorities presently residing at HUD headquarters. These authorities include the following: the authority to authorize the Department of Justice to issue Temporary Restraining Orders in cases under Title VIII of the Civil Rights Act of 1968 without review or concurrence by the General Counsel; the authority to settle Fair Housing cases from the area without approval by the General Counsel (In both of the above cases, however, the Assistant General Counsel for the geographical area who exercises this authority shall inform and give copies of the above actions taken to the General Counsel, the Deputy General Counsel for Civil Rights and Litigation, and the Assistant General Counsel for Fair Housing); the authority to approve secondary financing for projects under section 202 of the National Housing Act, and the authority to settle multifamily bankruptcies.

EFFECTIVE DATE: April 15, 1994.

FOR FURTHER INFORMATION CONTACT: Carole W. Wilson, Associate General Counsel for Equal Opportunity and Administrative Law, Department of Housing and Urban Development, room 10244, 451 Seventh Street, SW., Washington, DC 20410, telephone: (202)

708–2203. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In November of 1993, the Secretary announced the reorganization of the HUD field structure to improve HUD's performance and provide the Department's customers, members of the public and program beneficiaries, more efficient service and less bureaucracy. This notice implements the reorganization of the HUD field structure for the Office of General Counsel.

First, this notice changes the titles of each of the ten Regional Counsels to Assistant General Counsel for the new geographical areas under the reorganization. Specifically, the titles are changed as follows: The Regional Counsel for Region I is changed to the Assistant General Counsel for New England; the Regional Counsel for Region II is changed to the Assistant General Counsel for New York/New Jersey; the Regional Counsel for Region III is changed to the Assistant General Counsel for the Mid-Atlantic; the Regional Counsel for Region IV is changed to the Assistant General Counsel for the Southeast; the Regional Counsel for Region V is changed to the Assistant General Counsel for the Midwest; the Regional Counsel for Region VI is changed to the Assistant General Counsel for the Southwest; the Regional Counsel for Region VII is changed to the Assistant General Counsel for the Great Plains; the Regional Counsel for Region VIII is changed to the Assistant General Counsel for the Rocky Mountains; the Regional Counsel for Region IX is changed to the Assistant General Counsel for the Pacific/Hawaii; and the Regional Counsel for Region X is changed to the Assistant General Counsel for the Northwest/Alaska. All redelegations of authority now in effect to HUD Regional Counsel published in the **Federal Register** are modified to read Assistant General Counsel for the relevant geographic area.

Second, this notice provides that the Assistant General Counsel for each new geographical area will be selected by, report directly to, and his or her performance will be evaluated by the General Counsel or designee, subject to implementation of the joint labor/management recommendations of the Reorganization Task Force. The Chief Counsel and the Chief Attorneys in each field office will report to and their performance will be evaluated by the Assistant General Counsel for the geographical area. The Assistant General Counsel for the geographical area will assist in setting priorities for Chief Counsel and Chief Attorneys in the area.

Third, this notice redelegates from the General Counsel to the Assistant General Counsel for each new geographical area the authority set out in 24 CFR 103.500 to authorize the Department of Justice to issue Temporary Restraining Orders in case under Title VIII of the Civil Rights Act of 1968. This authority is redelegated without stipulation that the referrals must be reviewed or issued with the concurrence of the General Counsel. This notice also redelegates from the General Counsel to the Assistant General Counsel for each new geographical area the authority set out in 24 CFR 104.925 to settle Fair Housing cases. This authority is also redelegated without stipulation that a decision to settle must be approved by the General Counsel. In both of the above cases, however, the Assistant General Counsel for the geographical area who exercises this authority shall inform and give copies of the above actions taken to the General Counsel, the Deputy General Counsel for Civil Rights and Litigation, and the Assistant General Counsel for Fair Housing.

This notice also redelegates from the General Counsel to the Assistant General Counsel for each new geographical area the authority to approve secondary financing for projects under section 202 of the National Housing Act; and the authority to settle multifamily bankruptcies.

Accordingly, the General Counsel takes the following actions:

Section A. Title Change

The titles of each of the ten Regional Counsels are hereby changed to Assistant General Counsel for the new geographical areas under the reorganization. Specifically, the titles are changed as follows:

(1) The Regional Counsel for Region I is changed to the Assistant General Counsel for New England;

(2) The Regional Counsel for Region II is changed to the Assistant General Counsel for New York/New Jersey;

(3) The Regional Counsel for Region III is changed to the Assistant General Counsel for the Mid-Atlantic;

(4) The Regional Counsel for Region IV is changed to the Assistant General Counsel for the Southeast;

(5) The Regional Counsel for Region V is changed to the Assistant General Counsel for the Midwest;

(6) The Regional Counsel for Region VI is changed to the Assistant General Counsel for the Southwest;

(7) The Regional Counsel for Region VII is changed to the Assistant General Counsel for the Great Plains;

(8) The Regional Counsel for Region VIII is changed to the Assistant General Counsel for the Rocky Mountains;

(9) The Regional Counsel for Region IX is changed to the Assistant General Counsel for the Pacific/Hawaii; and

(10) The Regional Counsel for Region X is changed to the Assistant General Counsel for the Northwest/Alaska.

All redelegations of authority now in effect to HUD Regional Counsel published in the **Federal Register** are modified to read Assistant General Counsel for the relevant geographical area.

Section B. Selecting, Reporting and Evaluation Responsibilities

The Assistant General Counsel for each new geographical area will be selected by, report directly to, and his or her performance will be evaluated by the General Counsel or designee, subject to implementation of the joint labor/management recommendations of the Reorganization Task Force. The Chief Counsel and the Chief Attorneys in each field office will report to and their performance will be evaluated by the Assistant General Counsel for the geographical area. The Assistant General Counsel for the geographical area will assist in setting priorities for Chief Counsel and Chief Attorneys in the area.

Section C. Authority Redelegated

(1) The General Counsel hereby redelegates to each Assistant General Counsel for the new geographical areas the authority set out in 24 CFR 103.500 to authorize the Department of Justice to issue Temporary Restraining Orders in cases under Title VIII of the Civil Rights Act of 1968. This authority is redelegated without stipulation that the referrals must be reviewed or issued with the concurrence of the General Counsel. The Assistant General Counsel for each new geographical area who exercises this authority shall inform and give copies of authorizing documents to the General Counsel, the Deputy General Counsel for Civil Rights and Litigation, and the Assistant General Counsel for Fair Housing.

(2) The General Counsel hereby redelegates to the Assistant General Counsel for each new geographical area the authority set out in 24 CFR 104.925 to settle Fair Housing cases. The Assistant General Counsel for each new geographical area who exercises this authority shall inform and give copies of the settlement documents taken to the General Counsel, the Deputy General Counsel for Civil Rights and Litigation,

and the Assistant General Counsel for Fair Housing.

(3) The General Counsel hereby redelegates to the Assistant General Counsel for each new geographical area the authority to approve secondary financing for projects under Section 202 of the National Housing Act.

(4) The General Counsel hereby redelegates to the Assistant General Counsel for each new geographic area the authority to settle multifamily bankruptcies.

Section D. No Further Redelegation

The authority redelegated to the Assistant General Counsel for each new geographical area under Section C may not be further redelegated pursuant to this redelegation.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 1, 1994.

Nelson A. Díaz,

General Counsel.

[FR Doc. 94–5183 Filed 3–7–94; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for Tennessee Yellow-Eyed Grass for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for Tennessee yellow-eyed grass (*Xyris tennesseenis*. Fourteen populations are known to occur, including 8 in Alabama (Franklin, Bibb, and Calhoun Counties), 2 in Georgia (Bartow and Whitefield Counties), and 4 in Tennessee (Lewis County). Populations are located in spring meadows or along small streams. With the exception of three sites which occur all or partially on Federal lands (Calhoun County, Alabama), sites are on privately owned lands. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before April 15, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213 Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Cary Norquist at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan is Tennessee yellow-eyed grass (*Xyris tennesseensis*). This plant occurs in spring meadows or along small streams in Alabama, Georgia, and Tennessee. All sites feature nearly permanent moisture regimes, open, sunny conditions, and calcareous bedrock (shale, limestone, dolomite) or thin calcareous soils. Tennessee yellow-eyed grass was listed as endangered in 1991 due to its limited distribution, and loss or decline in populations due to drainage and conversion of habitat to agricultural fields and from timbering.

The objective of this proposed plan is to delist Tennessee yellow-eyed grass. Delisting will be considered when there are 15 adequately protected and managed, self-sustaining populations of the species distributed throughout the historical range. Actions needed to reach this goal include: (1) Protecting and managing populations, (2) surveying for new populations, (3) investigating potential management techniques, (4) conducting research on this species' ecological requirements and life history, and (5) maintaining plants and seed *ex situ*.

This Plan is being submitted for agency review. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 15, 1994.

Robert Bowker,

Field Supervisor.

[FR Doc. 94–5193 Filed 3–7–94; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Nevada; Hydrogeochemical Studies Program; Contribution Acceptance From Marigold Mining Co.

AGENCY: Geological Survey, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Geological Survey has accepted from Marigold Mining Company a contribution of $10,000 to support hydrogeochemical studies of the chemical mobility of gold and ore-related elements in ground-water systems associated with buried gold deposits in northern Nevada that are being conducted by scientists in the Branch of Geochemistry.

DATES: This notice is effective immediately.

ADDRESSES: Information on the work is available to the public upon request at the following location: U.S. Geological Survey, Branch of Geochemistry, Denver Federal Center, MS–973, P.O. Box 25046, Denver, Colorado 80225–0046.

FOR FURTHER INFORMATION CONTACT: Dr. David Grimes of the U.S. Geological Survey, Branch of Geochemistry, at the

address given above; telephone 303/236–5510.

Benjamin A. Morgan,

Chief Geologist.

[FR Doc. 94–5194 Filed 3–7–94; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[CA–059–4930–10–4503]

Preparation of an Amendment to the Redding Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to 43 CFR 1610.5–5, notice is hereby given that the Redding Resource Area of the Ukiah District, Bureau of Land Management, will prepare an amendment to the Redding Resource Management Plan. The purpose is to evaluate the effect of withdrawing certain public land from locatable mineral entry, and to use other certain public land for exchange rather than transfer to the U.S. Forest Service.

DATES: Written comments on this proposed amendment will be accepted on or before April 7, 1994.

ADDRESSES: Comments should be sent to the Area Manager, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002, Attn: RMP Amendment.

FOR FURTHER INFORMATION CONTACT: Francis Berg at the aforementioned address or call (916) 224–2100.

SUPPLEMENTARY INFORMATION: It has been determined from new data and an alteration in circumstances that an amendment to the Redding Resource Management Plan (RMP) be initiated. The purpose is (1) To evaluate the effect of withdrawing acquired property within the Sacramento River Management Area from locatable mineral entry (8 miles north of Red Bluff, Tehama County), and (2) to evaluate the proposal of using public land formerly designated for transfer to the U.S. Forest Service in an exchange (NE¼, Sec. 12, T. 25 N., R. 2 E., M.D.M.).

An Environmental Assessment (EA) will be prepared to evaluate the effect of this amendment. An interdisciplinary team will complete the EA for this proposed amendment. The scoping process for this EA will include: (1) Identification of specific issues; (2) identification of alternatives; and (3) notifying interested groups, individuals, and agencies so that additional information concerning these issues can be obtained.

Mark Morse,

Area Manager.

[FR Doc. 94–5195 Filed 3–7–94; 8:45 am]

BILLING CODE 4310–40–M

[ES–960–9800–02] ES–046660, Group 84, Arkansas

Filing of Plat of the Dependent Resurvey, Corrective Dependent Resurvey and Subdivision of Sections

The plat, in seven sheets, of the dependent resurvey of the south, east and north boundaries; the corrective dependent resurvey of a portion of the west boundary; the dependent resurvey of the subdivisional lines; and the survey of the subdivision of sections 3, 6, 15, 21, 27, 28, 29, 31, 32, 33, and 34, in Township 14 North, Range 21 West, Fifth Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on April 22, 1994. The survey was made upon request submitted by the United States Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Deputy State Director for Cadastral Survey, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., April 22, 1994.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy

Dated: February 28, 1994.

Carson W. Culp, Jr.,

State Director

[FR Doc. 94–5196 Filed 3–7–94; 8:45 am]

BILLING CODE 4310–GJ–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-No. 1129X)]

Consolidated Rail Corporation—Abandonment Exemption—in Chester County, PA

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 6.1 miles of line from approximately milepost 11.4 (the east side of Morehall Road in Cedar Hollow, PA) to approximately milepost 17.5 (approximately 1,500 feet west of Route 100 in Exton, PA), in Chester County, PA.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 7, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 18, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 28, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market St., P. O. Box 41416, Philadelphia, PA 19101–1416.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 11, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 2, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–5235 Filed 3–7–94; 8:45 am]

BILLING CODE FR 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In accordance with Departmental policy, 28 CFR 50.7 and pursuant to section 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that a proposed Consent Decree in *United States* v. *Agrico Chemical Company, at al.*, Civil Action No. 93–23–C, was lodged on February 15, 1994 with the United States District Court for the Northern District of Florida, Pensacola Division.

This case concerns a former fertilizer manufacturing facility at the intersection of Interstate 110 and Fairfield Drive in Pensacola, Florida, known as the Agrico Chemical Company Superfund Site (the "Site"). Pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607, the Complaint in this action seeks recovery of all past and future costs incurred and to be incurred by the United States at the Site, and injunctive relief for the Site, namely, implementation of the remedy selected by EPA in a Record of Decision ("ROD") dated September 29, 1992. The ROD provides for remediation of contaminated sludge and soils for Operable Unit 1 ("OU1") at the Site.

Defendants Agrico Chemical Company, a division of Freeport-MacMoRan Resource Partners Limited Partnership, and Conoco, Inc., a wholly owned subsidiary of E.I. Du Pont de Nemours and Company, Inc., (collectively, the "Settling Defendants") have agreed in the proposed Consent Decree to pay the United States $232,907.22 for past response costs incurred at the Site, as well as all future costs of overseeing the implementation of the Remedial Action of OU1. The Settling Defendants have also agreed to implement the remedy selected by EPA for the Site. The cost of the selected remedy is approximately $10,700,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Agrico Chemical Company, at al.*, DOJ Ref. #90–11–2–863.

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Florida, 114 East Gregory Street, Pensacola, Florida; the Office of the United States Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $43.00 (25 cents per page reproduction costs), payable to the Consent Decree Library for a copy of the Consent Decree with attachments (ROD, Statement of Work and Site map) or a check in the amount of $19.25, a copy of the proposed Consent Decree without those attachments.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–5197 Filed 3–7–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree United States v. Alcan Foil Products et al.

In accordance with Departmental Policy, 28 CFR 50.7 and pursuant to section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d)(2)(B), notice is hereby given that a Consent Decree in *United States* v. *Alcan Foil Products, et al.*, Civil Action No. 91–44 (E.D. Ky), was lodged with the United States District Court for the Eastern District of Kentucky on February 16, 1994. This action was brought under section 107 of CERCLA, 42 U.S.C. 9607. The Consent Decree provides that defendants Gene Holloway will pay $90,000 and Cintech Industrial Coatings, Inc. will pay $35,000 of the past costs incurred by the United States Environmental Protection Agency for response activities at the Custom Industrial Services site.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree from persons who are not parties to this action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Alcan Foil Products, et al.*, D.O.J. Ref. No. 90–11–2–547.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Kentucky, 110 West Vine Street, suite 400, Lexington, Kentucky 40507; the Region IV office of the United States Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. The proposed Consent Decree package consists of a 16 page Consent Decree. A request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $4.00 (25 cents per page reproduction charge) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–5198 Filed 3–7–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Stipulation and Settlement Order Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Sierra Environmental Group, Inc.*, Civil Action No. C2–93–248, was lodged on January 31, 1994 with the United States District Court for the Southern District of Ohio. The consent decree settles an action brought in 1993 to enforce the work practice requirements of the National Emission Standard for Hazardous Air Pollutants for asbestos, 40 CFR part 61, subpart M (1989). The civil penalty amount, $7500, is based in part on financial information submitted by the defendant. The decree calls for defendant to comply with the asbestos NESHAP and to require worker training in asbestos removal and inspection.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sierra Environmental Group, Inc.*, DOJ Ref. No. 90–5–2–1–1520.

The proposed consent decree may be examined at the Office of the United States Attorney, 280 North High Street, Fourth Floor, Columbus, Ohio 43215; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy please refer to the referenced case and enclose a check in the amount of $3.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Division.

[FR Doc. 94–5199 Filed 3–7–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 92–62]

Allan L. Gant, D.O.; Denial of Application

On June 23, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Allan L. Gant, D.O. (Respondent), of Richwood, West Virginia, proposing to deny his application for DEA registration as a practitioner. The statutory basis for seeking the denial of the application was that Respondent's registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f).

The Order to Show Cause alleged that in May 1990, while employed at the Richwood Medical Center, the Respondent admitted diverting to his personal use three 20 mg. bottles of injectable Demerol, a Schedule II controlled substance, and a bottle of injectable Valium, a Schedule IV controlled substance, from the stocks of that medical center; Respondent admitted in his personal history provided to a hospital treatment center in May 1990 that he had abused Demerol, a Schedule II controlled substance, during the period from at least 1984 until at least 1988; while in in-patient attendance at a rehabilitation facility in April 1990, Respondent self-administered Demerol which he had smuggled into that facility; and on June 5, 1990, he voluntarily surrendered his DEA Certificate of Registration, AG9806108, for cause.

Respondent, acting pro se, filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was conducted in Charleston, West Virginia, on January 21, 1993.

On November 4, 1993, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision, in which she recommended that the Respondent's application for registration be denied. On December 6, 1993, the administrative law judge transmitted the record to the Acting Administrator. The Respondent subsequently filed exceptions to the opinion, which were received by the administrative law judge on December 9, 1993, and forwarded to the Acting Administrator on December 13, 1993. Although not timely filed, the Acting Administrator has included the Respondent's exceptions in the record. The Acting Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that Respondent is an osteopath and is licensed and practices in West Virginia. Respondent is a Vietnam veteran, who testified that he sustained severe wounds and suffers from post-traumatic stress disorder as a result of his war experience. The Respondent testified that due to complications from his war wounds during 1986 to 1988, he began to self-administer Demerol to a point where he was using 300 mg. to 400 mg. two to four times daily.

The administrative law judge found that testimony and documents indicated that in September 1988, the Respondent, after a morphine overdose, was admitted to a Charleston hospital, and was subsequently treated by physicians at the Veterans Administration Hospital in Clarksburg for opiate dependence. In November 1988, he was transferred to the Preston Memorial Hospital and was released to the Shawnee Hills Outpatient Clinic. Respondent voluntarily discontinued his care in January 1989.

In April 1990, syringes and a bottle containing opiates were found in Respondent's personal effects, and while at an in-patient recovery center, Respondent self-injected Demerol which he had smuggled into that facility. Subsequently, in May 1990, the Chief Administrator of Richwood Medical Center, where the Respondent was employed, found three 20 mg. bottles of injectable Demerol and a bottle of injectable Valium missing from stocks. The Respondent admitted to his employer that he had taken them for his own use. Respondent was again admitted to Preston Memorial Hospital on May 24, 1990, but apparently refused to stay in the program and was discharged on June 4, 1990. The Respondent surrendered his previous DEA registration on June 5, 1990.

There was testimony at the administrative hearing that the Respondent was regularly ordering non-controlled injectable pain medications in his current private practice. The Respondent testified that they were the only type of analgesic that were appropriate and available for administration to his patients whom he saw both in his office setting and in the emergency room.

The Respondent also testified that he occasionally attended Alcoholics Anonymous meetings, but that he did not belong to Narcotics Anonymous or any impaired physician program because they were too far away. The Respondent submitted a letter from an addiction specialist physician who concluded that there was no medical, legal, or ethical reason why the Respondent should not be able to prescribe controlled drugs.

The administrative law judge found that the Secretary for the West Virginia Board of Osteopathy (Board), testified on behalf of the Board at the administrative hearing, that the Board was aware of the Respondent's problem with narcotics abuse and knew he had entered two rehabilitative programs but failed to successfully complete either. In addition, the Board had written to the Respondent and strongly urged him to enter a substance abuse program, and at the time of the hearing it was the Board's opinion that the Respondent should not receive a DEA Certificate of Registration.

The Respondent contended that the State licensing board had never indicated its opposition to his registration. He also stated that he was subject to regular urine testing by the Board and that he had not abused controlled substances in three years.

The Administrator may deny an application for registration if he determines that such registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors shall be considered. (1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

The administrative law judge found factors one, two, four and five relevant. Judge Bittner found as to factor one, that the State of West Virginia Board of Osteopathy recommended that Respondent not be given a DEA registration; as to factor two, the Respondent admitted personal use of Demerol and morphine; as to factor four, the Respondent self-administered controlled substances in violation of State and Federal law; and as to factor five, his drug abuse history and the status of his recovery were relevant to the public health and safety.

The administrative law judge found that the Respondent's testimony did not indicate that he had admitted or accepted the severity and nature of his drug dependency problem. Although the Respondent testified that this experience with surrendering his previous DEA registration had pushed him into earnest rehabilitation, Judge Bittner found that in the absence of evidence that Respondent is prepared and able to commit to a more aggressive recovery program, that his risk of relapse is substantial. The administrative law judge concluded that the Respondent is not yet ready to discharge the responsibilities inherent in a DEA registration, and recommended that if Respondent were to demonstrate in the future that he has made the requisite commitment, that his application for registration should be considered in a more favorable light.

The Respondent, in his December 6, 1993 letter, responding to the administrative law judge's opinion, objected to the testimony of the Government counsel (apparently a reference to the post-hearing brief filed by the Government, since there was no testimony presented by counsel); and the lack of weight ostensibly accorded to a letter from the addiction specialist submitted on his behalf. The Respondent also argued that he could not be a threat to the public since his medical practice was under scrutiny and any controlled substances administered in his practice would be handled by nurses. The Respondent also alleged that a Government witness had committed perjury and that Government investigators had lied to him or had engaged in underhanded tactics. The Acting Administrator finds nothing that would lend support to any of these contentions or allegations by the Respondent.

The Acting Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety. The Acting Administrator finds that the Respondent's registration is inconsistent with the public interest, and his pending application for registration must be denied. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration of Allan L. Gant, D.O., be, and it hereby is, denied. This order is effective March 8, 1994.

Dated: March 1, 1994.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 94–5204 Filed 3–7–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Open Meeting

SUMMARY: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. app. II) a Notice of establishment of the Glass Ceiling Commission was published in the Federal Register on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a meeting of the Commission which is to take place on Thursday, April 21, 1994. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted; and (c) recommending measures to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

TIME AND PLACE: The meeting will be held on Thursday, April 21, 1994 from 4 p.m. until 6 p.m. at the Sheraton, 777 St. Clair Avenue, Cleveland, Ohio 44114.

Agenda: The agenda for the meeting is as follows:

Review of Hearing Schedule
Discussion of Research
Discussion of Perkins-Dole Award

Public Participation: The meeting will be open to the public. Seating will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact the Commission no later than April 7, 1994, if special accommodations are needed. Individuals or organizations wishing to submit written statements should send twenty (20) copies to Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor,

200 Constitution Avenue, NW., Room S–2233, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2233, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 28th day of February, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–5252 Filed 3–7–94; 8:45 am]

BILLING CODE 4510–23–M

Glass Ceiling Commission; Open Site Hearing

SUMMARY: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and section 9 of the Federal advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. app. II) a notice of establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a public hearing of the Commission which is to take place on Friday, April 22, 1994. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of: (a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled; (b) conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted to management and decisionmaking positions; and (c) recommending measures designed to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

TIME AND PLACE: The hearing will be held on Friday, April 22, 1994 from 9 a.m. until 6 p.m. in the Cleveland City Council Chambers, 601 Lakeside Avenue, 2nd floor, Cleveland, OH 44114.

Agenda: The agenda for the hearing is as follows:

9 a.m. Opening Remarks.
9:30 Welcome by Mayor and other government officials.
9:45–12:30 Witnesses.
12:30–1:45 Lunch break.
2–5 Witnesses.
5–6 p.m. Open public session.

Public Participation: The hearing will be open to the public. Seating will be available on a first-come, first-serve basis. Seats will be reserved for the media. Disabled individuals should contact the Commission no later than April 7, 1994, if special accommodations are needed.

Individuals or organizations wishing to testify orally must provide written testimony in advance of the hearing. Send twenty (20) copies of testimony, postmarked on or before April 4, 1994, to: Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2233, Washington, DC 20210.

The written testimony must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) Oral comments are limited to 10 minutes, written testimony may be longer.

(4) The issues that will be addressed.

(5) Twenty (20) copies of testimony. (Testimony may be longer in length than oral comments.)

This information is needed to properly develop a hearing schedule. As many people as time allows will be permitted to testify. To provide all interested parties an opportunity to present their views in the public hearing, and answer questions from Commissioners.

Issues: Testimony should highlight successful initiatives and/or recommendations for addressing the areas discussed below. The Commission is especially interested in hearing about procedures, practices and systems that have been put in place to make sure that goals are achieved in work force diversity.

Recruitment: What systems are in place to ensure that external recruiting for decisionmaking positions will produce a pool of applicants which includes minorities and women? Similarly, does the process for considering promotion of current employees to decisionmaking positions ensure consideration of minorities and women?

Developmental practices and credential building experiences: How are minorities and women ensured that they will be given the kinds of experiences that will make them competitive for decisionmaking positions, including not only advanced education, but also developmental assignments such as to corporate committees and task forces, special projects, etc.

Accountability for equal employment opportunity responsibilities: How are senior level executives, line managers, and corporate decision makers held accountable for EEO responsibilities?

Compensation systems: How is the total compensation package including bonuses, stock options and other incentives evaluated for fairness for minorities and women? How is the appraisal system/performance rating system protected from subjective decisions which impact compensation? Do management and supervisory compensation system depend upon or reward managers' achieving work force diversity goals, and, if so, how does that work?

Placement patterns: What kind of monitoring is done to ensure that minorities and women are placed in the line positions that will provide better opportunity for promotion to decisionmaking positions?

Testimony on successful initiatives may include discussion of the elements above and how other factors are combined to create a complete initiative resulting in the advancement of minorities and women.

A videotape may be made of the hearing. A transcript of the hearing will be made.

Materials submitted at this hearing should not have been submitted at any previous or subsequent Glass Ceiling Commission hearings.

Those individuals or organizations wishing to submit written statements, but not testify orally, should send twenty (20) copies to Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2233, Washington, DC 20210. Written statements should be postmarked on or before April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue., NW., room S–2233, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 28th day of February, 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–5250 Filed 3–7–94; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Job Training Partnership Act: Farmworker Housing Assistance Program; Availability of Funds for Technical Assistance

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; clarifications; reopening of application period.

SUMMARY: On December 27, 1993, the Department of Labor, Employment and Training Administration (ETA), published a notice in the **Federal Register** at 58 FR 68441, announcing the availability of funds and a solicitation for grant applications (SGA/DAA–94–002) (SGA) to conduct demonstration projects for the Housing Assistance Program. Corrections and clarifications to that notice were published on February 1, 1994. 59 FR 4723–4726. All information and forms required to submit an application are contained in the February and December notices. This notice is to provide clarifications regarding the eligibility of applicants and the application process, the number of option years, and to extend the closing date of the SGA.

DATES: The period for accepting applications for grant award(s) under the SGA is reopened effective February 25, 1994. The closing date for receipt of applications is April 7, 1994, at 2 p.m. (Eastern Time) at the address published in the SGA at 58 FR 68441 (December 27, 1993).

FOR FURTHER INFORMATION CONTACT: Ms. Irene Taylor-Pindle or Ms. Shirley Horton, Division of Acquisition and Assistance. Telephone: (202) 219–8702 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This SGA is clarified as follows:

1. *Eligible Award Recipients.* Eligible participants for funds under the SGA 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. Consortia of eligible applicants as well as applicants representing a single area may also apply. The Department of Labor will consider all applicants based on their merit. ETA plans to make multiple awards from this solicitation.

2. *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 two option years.

3. *Funding Level.* The total amount available for this solicitation will be up to $3,000,000.

Signed at Washington, DC, this 24th day of February 1994.

James C. Deluca,

Grant Officer, ETA.

[FR Doc. 94–5251 Filed 3–7–94; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–21; Exemption Application No. D–9464, et al.]

Grant of Individual Exemptions; Ashley Construction, Inc. Retirement Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Ashley Construction, Inc. Retirement Plan (the Plan) Located in Hidden Hills, CA

[Prohibited Transaction Exemption 94–21; Exemption Application No. D–9464]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The loan (the Loan) by the Plan of an amount that will not exceed $350,000 to Ashley Construction, Inc. (the Employer), a party in interest with respect to the Plan; and (2) the personal guarantee of the Employer's obligations under the Loan by Michael F. Ashley (Mr. Ashley), a party in interest with respect to the Plan.

This exemption is conditioned upon the following requirements: (a) The terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) the Loan will not exceed twenty-five percent of the assets of the Plan at any time during the duration of the Loan; (c) the Loan is secured by a first deed of trust on certain real property (the Property), which has been appraised by a qualified, independent appraiser to ensure that the fair market value of the Property is at least 150 percent of the amount of the Loan; (d) the Employer's obligations under the Loan are personally guaranteed by Mr. Ashley; (e) the fair market value of the Property remains at least equal to 150 percent of the outstanding balance of the Loan throughout the duration of the Loan; (f) an independent, qualified fiduciary determines on behalf of the Plan that the Loan is in the best interests of the Plan and protective of the Plan's participants and beneficiaries; and (g) the independent, qualified fiduciary monitors compliance with the terms and conditions of the exemption and the Loan throughout the duration of the transaction, taking any action necessary

to safeguard the Plan's interest, including foreclosure on the Property in the event of default.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 17, 1993 at 58 FR 66034.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

The Avram A. Jacobson, M.D. Employee Profit Sharing Plan (the Profit Sharing Plan) and the Avram A. Jacobson, M.D. Employee Money Purchase Pension Plan (the Money Purchase Plan; Collectively, the Plans) Located in Beverly Hills, CA

[Prohibited Transaction Exemption 94–22; Application Nos. D–9470 through D–9473]

Exemption

The sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of certain works of art (the Art Work) by the Plans to Avram A. Jacobson, M.D., a sole proprietor and disqualified person with respect to the Plans.

This exemption is conditioned upon the following requirements: (1) The Sale is a one-time cash transaction; (2) the Plans are not required to pay any commissions, costs or other expenses in connection with this transaction; (3) the Art Work is appraised by qualified, independent appraisers; (4) the sale price for the Art Work reflects the greater of either: (a) The original amount paid by the Plans at the time of acquisition; or (b) its fair market value on the date of the Sale; and (5) within ninety days of the publication in the **Federal Register** of the grant of this exemption, Dr. Jacobson will file Forms 5330 with the Internal Revenue Service and pay all applicable excise taxes that are due by reason of the past prohibited transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 5, 1994 at 59 FR 599.

For Further Information Contact: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Cargill, Incorporated and Associated Companies Salaried Employees' Pension Plan, et al. (the Plans) Located in Minneapolis, MN

[Prohibited Transaction Exemption 94–23; Application Nos. D–9424 through D–9430]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) a series of purchases by the Cargill, Incorporated and Associated Companies Master Pension Trust (the Master Trust) of shares of common stock (the Common Stock) of Cargill, Incorporated (Cargill), a party in interest with respect to the Plans and the Master Trust; (2) the Master Trust's holding of the Common Stock; and (3) the acquisition, holding, and exercise by the Master Trust of an irrevocable put option (the Put Option) with respect to the Common Stock; provided that the following conditions are satisfied:

(A) The Master Trust pays no more than the fair market value of the Common Stock on the date of each acquisition;

(B) The Master Trust's interests for all purposes with respect to the Common Stock are represented by a qualified, independent fiduciary for the duration of the Master Trust's holding of any of the Common Stock;

(C) Prior to each acquisition of Common Stock by the Master Trust, the independent, qualified fiduciary must determine on behalf of the Plans and the Master Trust that the proposed acquisition is appropriate for and in the best interests of the Plans and the Master Trust;

(D) The independent fiduciary will take whatever action is necessary to protect the Master Trust's rights, including, but not limited to the exercise of the Put Option, if the independent fiduciary, in its sole discretion, determines that such exercise is appropriate;

(E) The independent fiduciary retains the right under the Put Option to require Cargill, at any time, to purchase some or all of the Common Stock from the Master Trust for the greater of: (1) the price of the Common Stock on the date of the Master Trust's acquisition of the Common Stock, or (2) the fair market value of the Common Stock as of the date the Put Option is exercised;

(F) Cargill's obligations under the Put Option remain secured by an escrow account containing cash or U.S. government securities worth at least 25 percent of the fair market value of the Common Stock; and

(G) Subsequent to each acquisition, none of the Plans in the Master Trust will have more than 10 percent of the fair market value of its assets invested in the Common Stock.

Temporary Nature of Exemption

The exemption is temporary and will expire five years from the date this Final Grant is published in the **Federal Register** with respect to the Master Trust's acquisition of the Common Stock. The Master Trust may hold the Common Stock pursuant to the terms of the exemption subsequent to the end of the five year period.

Comments

In the Notice of Proposed Exemption, the Department invited interested persons to submit written comments and requests for a hearing on the exemption. All comments and requests for hearing were due by December 13, 1993. The Department received over 50 telephone inquiries from interested persons who expressed concern over the effect, if any, of the transaction on their pension benefits. These inquiries were responded to by a Department representative who informed the callers that the transaction does not affect the calculation of pension benefits or the Plans' obligation to make benefit payments.

The Department received a total of 31 written comments with 7 of those comments containing a request for a hearing.[1] Three commentators stated that they did not understand the proposed exemption or how it would affect their pensions. One commentator expressed concern about the impact of the exemption on his retirement benefits but did not specifically object to the exemption. Three interested persons encouraged the Department to grant the exemption. The remaining commentators were opposed to the granting of the exemption.

The interested persons who were opposed to the granting of the exemption expressed concerns about the following subjects: (1) The security of their retirement benefits under the Plans and the current funding status of the Plans; (2) the possibility that the acquisition of the Common Stock would be detrimental to the Plans because it would decrease the liquidity and diversification of the Plans' investment portfolio; (3) the perceived lack of

[1] Because the exemption provides relief from section 406(b) of the Act, 29 CFR 2570.46 of the Department's regulations provides that the Department in its discretion may convene a hearing if requested by interested persons.

independence on the part of the qualified appraiser, independent fiduciary and Plan trustees; (4) the alleged payment of fees to the independent fiduciary and the independent appraiser by the Master Trust; (5) the prudence of allowing the Plans to invest in the Common Stock, including questions concerning the past investment performance and the current value of the Common Stock; and (6) the belief that the Plans' interests were not adequately protected by the escrow account (the Escrow) established by Cargill to safeguard the Plans' investment in the Common Stock.

State Street (the Plans' independent fiduciary), D&P (the qualified appraiser) and the applicant all submitted separate responses to the relevant portions of these comments.

With regard to the security of retirement benefits under the Plans, the applicant and State Street explain that all of the Plans invested in the Master Trust are defined benefit plans, the benefits of which are pre-determined by a formula. It is represented, therefore, that any decreases in the value of an asset held in the Master Trust should not adversely affect the amount or timely payment of benefits under any of the Plans. The applicant responds to the concerns over the funding status of the Plans by pointing out that the Plans, in the aggregate, have been overfunded since 1988. The applicant represents that as of December 31, 1992, the Plans, in the aggregate, were overfunded by approximately $46 million.

With respect to concerns that investment in the Common Stock may jeopardize the diversification or liquidity of the Plans' investments, the applicant represents that Cargill has established mechanisms to assure that the Plans' investment portfolio will remain diversified in compliance with section 404 of the Act and that the investment in the Common Stock is prudent and does not jeopardize the Plans' liquidity. In this regard, the applicant states that the Plans' Investment Committee determines the types of investments that are appropriate to assure that the Master Trust investments are diversified and sufficiently liquid. Furthermore, State Street represents that in reaching its conclusion that the Common Stock would be a prudent investment for the Plans, it relied upon the determination of the Investment Committee that such an investment would be consistent with the overall investment policy of the Plans. State Street represents that, prior to each proposed acquisition of Common Stock, State Street will review the Master Trust's asset allocation schedule and the Investment Committee's determinations regarding the diversification and liquidity requirements of the Plans. If, following such review, State Street believes that the Investment Committee's conclusions are not reasonable, State Street will not allow the Master Trust to consummate the proposed acquisition of the Common Stock.

State Street also represents that the Put Option provides the Master Trust with a substantial degree of liquidity because it enables the independent fiduciary to require Cargill to purchase up to 100% of the Common Stock held by the Master Trust at any time. In addition, State Street notes that the valuation method used by D&P takes into account the fact that the Common Stock is not publicly traded. Finally, the conditions of the exemption prohibit the Plans from investing more than 10% of the fair market value of their assets in the Common Stock and provide that the exemption will expire 5 years from the date it is granted. After the expiration of the exemption, the applicant would have to apply for another exemption in order to allow the Master Trust to acquire additional shares of the Common Stock.

The applicant has responded to each of the comments questioning the independence of the parties selected to represent the interests of the Plans. The applicant explains that, contrary to the commentator's assertion, the trustees of the plan are not employees or former employees of Cargill. As stated in the Proposed Exemption, the Trustee is the Boston Safe Deposit and Trust Company. The applicant also explains, that, contrary to the commentator's assertion, D&P was selected as the qualified appraiser by State Street, not by Cargill. D&P represents that, other than serving as a financial advisor to State Street in matters relating to Cargill qualified plans, D&P has no ongoing business relationship with Cargill. Finally, in response to a comment questioning State Street's independence from Cargill, State Street represents that its existing business relationships with Cargill are clearly de minimis and will in no way undermine its ability to serve as the independent fiduciary. Cargill represents that it selected State Street to represent the interests of the Plans and the Master Trust because of State Street's expertise and extensive experience in serving as an independent fiduciary for ERISA retirement plans, including plans with investments in employer securities.

The applicant counters the allegation by one of the commentators that the holders of Common Stock would retain indirect control over the shares they sold to the Master Trust, by explaining that State Street will have complete management authority and control over any and all rights relating to the Common Stock.

In response to the commentator who objects to having the Master Trust pay the fees of State Street and D&P, the applicant states that Cargill, not the Master Trust, has agreed to pay those fees in order to avoid depleting the Masters Trust's assets.

In its response to the comments concerning the past investment performance and the current value of the Common Stock, D&P has explained why neither of the methods mentioned in the comments is an appropriate method for measuring the value of the Common Stock. According to D&P, comparing the performance of the Common Stock with the S&P 500 index is inappropriate because the Common Stock is not publicly traded and because such a comparison fails to recognize the value of the Put Option to the Plans. D&P explains that, unlike the securities making up the S&P 500, the Common Stock is an asset which has both upside investment potential and downside protection. D&P also asserts that a comparison of the dividend yield of the Common Stock versus other investments is inappropriate. D&P explains that dividend yield is typically calculated as dividends as a percentage of stock price. Although Cargill has paid dividends on its Common Stock, Cargill's historical dividend yield is not know because its Common Stock is not publicly traded and has not been regularly valued. State Street represents that, in making its investment decision, not just the current dividend, but also the expected total return of the Common Stock is considered. In this regard, D&P has determined that that Cargill's expected total long term compound annual return on investments (dividends plus capital appreciation) is in the range of 11 to 13 percent per annum.

As noted in the Proposed Exemption, since there is no public market for the Common Stock, D&P has relied primarily on an analysis of comparable, publicly traded companies in assessing the fair market value of the Common Stock. D&P represents that the comparable company method of valuation is generally accepted in the financial and investment community and is regularly used by bankers, investment bankers and other financial advisors in negotiating a transaction between a buyer and seller of a closely held company.

After consultation with D&P, State Street represents that it is satisfied that the Common Stock will be priced in a manner which is competitive with the public market prices of comparable public equity securities and that the expected total annual rate of return reflected in such pricing is in line with that of comparable public equity securities and the S&P 500 generally. In addition, State Street is satisfied that, when the incremental downside protection, and the resultant reduction in risk provided by the Put Option is taken into account, the Common Stock becomes favorably priced as compared to alternative investments. Significantly, State Steet notes that, because D&P will value the Common Stock without taking into consideration the Put Option granted to the Master Trust, the incremental value added by the Put Option will not be reflected in the purchase price paid by the Master Trust for the Common Stock.

With regard to complaints that the Escrow covers only 25% of the amount payable to the Master Trust upon exercise of the Put Option, State Street represents that, under the circumstances of this transaction, the Escrow provides adequate protection to the Master Trust. State Street asserts that the Escrow is adequate in view of (1) the size, financial strength and creditworthiness of Cargill relative to the amount of its potential obligations under the Put Option and (2) the independent fiduciary's right to exercise the Put Option at any time that it determines that such an exercise is necessary to protect the interests of the Plans.

Finally, the applicant represents that comments referring to an alleged offer by Cargill to sell stock to salaried employees in June, 1992 are incorrect. Cargill represents that no such offer ever took place. Cargill does note, however, that shares of the ESOP common stock are automatically allocated to eligible members of the Cargill, Incorporated Partnership Plan pursuant to the terms of that plan.

Seven of the interested persons who commented on the proposed exemption requested a public hearing. The Department has considered the concerns expressed by the commentators and the applicant's written responses addressing such concerns, and, on the basis of the materials provided, has determined not to hold a public hearing. Furthermore, after giving full consideration to the entire record, including the written comments and the responses thereto, the Department has decided to grant the exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on October 29, 1993, at 58 FR 58194.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC this 3rd day of March 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–5248 Filed 3–7–94; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9295, et al.]

Proposed Exemptions; Lone Star Industries, Inc. Master Retirement Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Lone Star Industries, Inc. Master Retirement Trust (the Master Trust) Located in Chicago, IL

[Application No. D–9295]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Transactions

If the exemption is granted, effective September 10, 1990, the restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

(a) the lease (the Lease) by the Master Trust of a certain parcel of real property (the Property) located in Rancho Cordova, California, to RMC Lonestar (RMC), a party in interest with respect to plans participating in the Master Trust (the Plans);

(b) the obligations and guarantees to the Master Trust by Lone Star Industries, Inc. (LSI), a party in interest with respect to the Plans, arising under the terms of the Lease on the Property, subsequent to the assignment by LSI of its leasehold interest in the Property to RMC; and

(c) the payment in the amount of $6,000,000 by LSI to the Master Trust in exchange for a release of LSI's obligation to perform under the terms of a certain yield guarantee agreement (the Guarantee Agreement) signed December 18, 1992, by LSI and the Master Trust; provided that the conditions set forth in section II below are met.[1]

Section II—Conditions

This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) the Bankruptcy Court for the Southern District of New York (the Bankruptcy Court) enters an order confirming the modified amended consolidated plan of reorganization filed by LSI and its affiliates, pursuant to Chapter 11 of the Bankruptcy Code;

(b) the obligations and guarantees of LSI to the Master Trust under the Lease are assumed by LSI and continue after the plan of reorganization is confirmed by the Bankruptcy Court;

(c) LSI pays the $6,000,000 in a single lump-sum payment in cash to the Master Trust, not later than sixty (60) days following the later of (1) the date of the order of the Bankruptcy Court approving the payment, or (2) the date the grant of this exemption is published in the **Federal Register**;

(d) Morrison, Karsten, Ramzy & Arthur, Inc. (MKRA), acting as independent qualified fiduciary on behalf of the Master Trust (the I/F), has negotiated, reviewed, and approved the transactions, and has determined that the transactions were feasible, in the interest of, and protective of the participants and beneficiaries of the Plans invested in the Master Trust, as of the effective date of this exemption;

(e) MKRA at the time of its appointment was unrelated to LSI, RMC, and any other parties involved in the Lease and will at all times remain independent of such parties;

(f) the provisions of the amendment to the Lease, as described in paragraph 11 below, executed in December 1992 (the First Amendment) become effective on the date that the grant of this exemption is published in the **Federal Register**;

(g) the terms of the Lease, as modified by the First Amendment, are at least as favorable to the Master Trust, the Plans, and their participants and beneficiaries, as those which could have been obtained by the Master Trust in an arm's length negotiations with an unrelated third party under similar circumstances;

(h) from September 10, 1990, to June 1, 1993, the Northern Trust Company (the Trustee), an independent party with respect to LSI, RMC, and their affiliates, managed the Property on behalf of the Master Trust and monitored and enforced the terms of the Lease;

(i) from June 1, 1993, MKRA managed the Property on behalf of the Master Trust and monitored and enforced the terms of the Lease, and MKRA or its successors, will act as I/F with respect to the Property and will monitor and enforce the provisions of the Lease as long as such Property is leased to a party in interest;

(j) MKRA or its successors will monitor the fair market value of the Master Trust in order to insure that the fair market value of the Property will at no time exceed twenty percent (20%) of the total fair market value of the assets of the Master Trust;

(k) LSI has either paid directly or reimbursed the Master Trust for any fees, other than trustee and investment management fees, incurred with respect to the ownership of the Property by the Master Trust, and in the future, the Master Trust will incur no fees in connection with the transactions, other than fees paid to the trustee and to the investment manager; and

(l) LSI has filed Forms 5330 and paid the excise taxes with respect to the Lease of the Property for years 1987–1989 and will file Forms 5330 and pay the excise taxes for the period after December 31, 1989, and before the effective date of this exemption.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective as of September 10, 1990.[2]

Summary of Facts and Representations

1. The Plans are pension plans sponsored by LSI and its subsidiaries.

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] The Department is not proposing exemptive relief for the prohibited transactions described herein prior to September 10, 1990. In this regard, it is represented that LSI on July 31, 1990, filed an excise tax return on Forms 5330 for plan years 1987, 1988, and 1989 and paid the excise taxes with respect to the Property for years 1987–1989. It is also represented that LSI will file Forms 5330 and pay the excise taxes for the period after December 31, 1989, and before the effective date of this proposed exemption.

LSI, a corporation whose stock is publicly traded on the New York Stock Exchange, engages in the mining, processing, and distributing of sand, gravel, and crushed stone. In addition, LSI is a major source of ready-mixed concrete and precast concrete products and is a leading importer of cement and clinker. During 1987, LSI had net sales of $760.8 million and a net profit of $57.2 million. Since December 31, 1987, LSI has been one of two general partners, each of whom own a fifty percent (50%) interest in RMC, a California general partnership. Prior to that time, LSI and a wholly owned subsidiary together owned a hundred percent (100%) interest in RMC. RMC, with principal offices in Pleasanton, California, also engages in mining operations.

2. On January 1, 1979, the Master Trust was established, to provide for the commingled investment of the assets of Plans sponsored by LSI and its affiliates. As of June 30, 1992, there were nine (9) such Plans participating in a Master Trust, covering approximately 5,917 individual participants. As of the same date, the total value of the assets held by the Master Trust was approximately $88,223,000 of which approximately $29 million was held in a segregated fund for the benefit of LSI's Salaried Employees Pension Plan. Of the remaining $59 million, approximately $55 million was held for the benefit of the pension plans for hourly employees of LSI, and an additional $4 million was held for the benefit of the pension plans for salaried employees of LSI. It is represented that, as of June 30, 1992, a value for the Property of approximately $8,340,000 was included in and constituted approximately 14.1% of the $59 million dollar figure. Until June 1, 1993, when MKRA was appointed as Property manager, the Northern Trust Company, as the Trustee of the Master Trust, had discretionary authority over the management of the Property.

3. The Property consists of approximately 800 acres in Rancho Cordova, California located twelve (12) miles east of downtown Sacramento, California, and adjacent to Mather Air Force Base. Most of the Property is unimproved land currently being mined by RMC for sand, gravel, stone, clay, or other materials, exclusive of gold or gold tailings (the Aggregates), pursuant to the Lease between the Master Trust and RMC. It is anticipated that approximately 100 acres of the Property containing the plant site will not be mined.

4. The Master Trust acquired the Property from LSI on December 20, 1983, for a purchase price of $5,706,016, and simultaneously leased the Property back to LSI. It is represented that the Property was part of a larger tract of real estate (the Tract) which under California law could not then be subdivided or separately conveyed to the Master Trust. Accordingly, the Master Trust acquired from LSI an undivided 62.8% interest, while LSI, respectively, retained 37.2% interest in the Tract.[3] Subsequently, during 1984, applicable provisions of California law necessary to subdivide the Tract were satisfied, and the Master Trust became the sole owner and lessor of the Property.

It is represented that the Property was "qualifying employer real property," as defined in section 407(d)(4) of the Act, when acquired by the Master Trust in 1983, because the Master Trust held other parcels of real estate which were then leased to LSI or its affiliates and which qualified as "employer real property," as defined in section 407(d)(2) of the Act.[4] The applicant asserts that the sale and leaseback of the Property between the Master Trust and LSI until 1986 were exempt from the prohibited transaction restrictions by reason of section 408(e) of the Act.[5]

5. By 1986, except for the Property, the Trustee had disposed of all other parcels of real estate in the Master Trust which were leased to LSI or its affiliates. Accordingly, the Property became the only parcel of "employer real property," as defined by section 407(d)(2) of the Act, which remained in the Master Trust. As the sole remaining parcel of "employer real property" held in the Master Trust, the applicant represents that the Property may have, at that time, no longer constituted "qualifying employer real property," because the "substantial number" requirement, as set forth in section 407(d)(4)(A) of the Act, may no longer have been satisfied. As a result, the exemption for the Lease provided by section 408(e) may no longer have been available.

6. As stated in paragraph 4 above, LSI entered into the Lease of the Property with the Master Trust on December 20, 1983. On January 1, 1987, the Trustee of the Master Trust approved the assignment by LSI of the Lease of the Property to RMC, and the Master Trust began to Lease the Property to RMC rather than LSI. Notwithstanding the assignment of the leasehold interest of LSI to RMC, it is represented that LSI was not released from its obligations under the Lease, nor were the terms of the Lease between LSI and the Master Trust altered by the assignment of the Lease.

The Lease provides that its term shall end on December 31, 2003, unless sooner terminated. The Trustee has the right to terminate the Lease on certain portions of the Property prior to December 31, 2003, effective on specified dates, provided RMC is given at least six months prior written notice of such effective termination date. Under certain circumstances, the Lease also gives the Trustee the right to terminate such Lease with respect to any portion of the Property which is not continuously mined or quarried during specified periods.

It is represented the Trustee recognized the need to maintain a fair market rental throughout the duration of the Lease. Accordingly, the rental rate under the terms of the Lease are based on royalties to be paid to the Master Trust to compensate primarily for the removal of the Aggregates from the Property and the subsequent sale of such Aggregates. In this regard, under the terms of the Lease, the royalty on the Aggregates was set in 1983 at thirty cents ($.30) per ton; provided that in any lease year the lessee pays no less than seven percent (7%) of the net

[3] The Department is expressing no opinion as to whether the acquisition and holding by the Master Trust of a partial interest in the Tract in which LSI owned the remaining interest violated section 406 of the Act, nor is the Department offering relief for such transaction. Further, the Department is not proposing relief for any violation of section 404 of the Act which may have arisen as a result of any of the transactions described herein.

[4] As set forth in relevant part below, section 407(d)(2) of the Act defines the term, "employer real property," as real property (and related personal property) which is leased to an employer of employees covered by the plan, or to an affiliate of such employer. Section 407(d)(4) of the Act defines the term, "qualifying employer real property," as parcels of "employer real property"—(A) if a substantial number of the parcels are dispersed geographically; (B) if each parcel of real property and the improvements thereon are suitable (or adaptable without excessive cost) for more than one use; (C) even if all of such property is leased to one lessee (which may be an employer, or an affiliate of an employer); (D) if the acquisition and retention of such property comply with the provisions of this part (other than section 404(a)(1)(B) to the extent it requires diversification, and sections 404(a)(1)(C), 406, and subsection (a) of this section). The Department is expressing no opinion, herein, whether the Property at any time constituted "qualifying employer real property" within the meaning of section 407(d)(4) of the Act.

[5] Section 408(e) of the Act provides, in pertinent part, that sections 406 and 407 shall not apply to the acquisition or lease by a plan of "qualifying employer real property," as defined in section 407(d)(4) of the Act, if specified conditions are satisfied. Among these conditions are that such acquisition or lease is for adequate consideration, that no commission is charged with respect thereto, and, in the case of an acquisition or lease of "qualifying employer real property" by a plan which is not an "eligible individual account plan," as defined in section 407(d)(3) of the Act, that the lease or acquisition is not prohibited by section 407(a) of the Act. The Department is expressing no opinion herein as to whether the sale and leaseback of the Property satisfied the conditions, as set forth under section 408(e) of the Act.

realized income from the sale of such Aggregates. For each year during the term of the Lease, commencing in the second year, the Lease also provides that the royalty on Aggregates is subject to a four percent (4%) yearly increase, compounded annually. For example, in the second year of the Lease, the royalty on the Aggregates increased from the initial 30 cents per ton to 31.2 cents per ton of Aggregates. In addition, the Lease provides that for each ton of gold or gold tailings extracted from the Property the lessee shall pay a royalty equal to 33⅓% of the net realized income from the sale of such gold or gold tailings. It is represented that all the terms of the Lease are triple net and provide for the lessee to pay for all taxes, maintenance, and insurance.

Notwithstanding the level of production or sale of Aggregates or gold by the lessee, the Lease also provides for certain minimum guaranteed annual payments of royalties by the lessee starting in the sixth year (1989) and ending in the fifteenth year (1998) of the Lease. In this regard, the Lease provides that these minimum guaranteed royalties increase by $25,000 annually through 1998. For example, the terms of the Lease established the minimum guaranteed royalty amount at $375,000 for 1989 and at $600,000 in 1998, the fifteenth year of the Lease. It is represented that the royalty payments actually made by RMC have exceeded the minimum guaranteed royalty amounts for the years 1989 through 1992. As indicated in paragraph 6 above, despite the assignment of the leasehold on the Property to RMC, LSI at all times remains primarily liable to the Master Trust for the continuing obligations and guarantees, including the minimum guaranteed royalties specified under the Lease.

As originally contemplated by LSI and the Master Trust, although the Lease term extended until 2003, the guarantee of minimum annual royalty payments by LSI was not to extend beyond 1998. Such amounts are not guaranteed by LSI, because it was originally anticipated that the reserves of the Aggregates on the Property would be exhausted by 1998. Nevertheless, it is represented that provision was made to continue the Lease beyond 1998 in the event there was sufficient production or sale of the Aggregates from the Property during the five-year period from 1999 to 2003.

7. In an attempt to obtain a prohibited transaction exemption from the Department for the ongoing Lease, MKRA, a registered investment advisor under the Investment Advisors Act of 1940, was appointed by LSI in June 1990 to serve as the I/F to the Master Trust with respect to the Lease. MKRA was appointed to determine whether the continued holding of the Property by the Master Trust and the leasing of the Property to RMC was in the best interests of the Plans. In doing so, MKRA was to evaluate the Lease and to determine whether the terms of the Lease provided a fair market rental return to the Master Trust. In this regard, MKRA was authorized to engage an independent appraiser, as needed. It is represented that, if MKRA were to conclude that the continuation of the Lease was not in the best interests of the participants of the Plans, MKRA was to notify and consult with LSI with respect to such findings and to negotiate independently any changes to the terms and conditions of the Lease, as would be necessary for MKRA to determine that such continued holding of the Property and leasing of such Property to RMC would be in the best interests of the participants of the Plans.

On June 1, 1993, MKRA assumed further responsibilities in addition to its duties as I/F. In this regard, LSI appointed MKRA to serve as investment manager for the Property on behalf of the Master Trust. MKRA's duties in this regard include monitoring and enforcing the terms of the Lease. These duties had previously been performed by the Trustee. MKRA maintains offices located in Santa Rosa, California and specializes in the management and disposition of distressed and under performing real estate assets for tax-exempt and non-exempt institutional clients. MKRA is independent in that it is unrelated to any of the parties involved in the Lease.

MKRA's qualifications include managing, as of 1990, approximately $40 million in assets involving a variety of property types located throughout the West and the Southwest. Further, it is represented that MKRA is familiar with land value trends in the Sacramento area and has an excellent network of contacts there for appraisal, geological, and real estate transaction information. In this regard, with respect to the highly specialized operations on the Property, MKRA interviewed and consulted with independent third parties active in the sand and gravel industry in the Sacramento or San Francisco Bay areas.

8. In a report dated September 10, 1990, MKRA stated that the Lease needed to be modified in several respects. MKRA determined, among other modifications, that the Master Trust should receive a "put option" (the Put Option) which would require LSI to purchase the Property from the Master Trust at the end of the Lease at a cash price that, when considered with all royalties and earlier disposition proceeds, if any, received by the Master Trust over the life of the investment, would generate a twelve percent (12%) internal rate of return on the Property for the Master Trust. Provided this modification and others were made, MKRA concluded that the continued holding of the Property by the Master Trust and the leasing to RMC would be in the best interests of the Plans.

9. MKRA's conclusion was based, in part, on its review, among other materials, of the annual reports and related financial information of LSI and RMC and the presumption that LSI and RMC were and would remain sufficiently creditworthy to honor the recommended Put Option and thereby assure the Master Trust a 12% market yield for the Property as leased. However, on December 10, 1990, while the application for exemption was under consideration by the Department, LSI filed a petition to reorganize under Chapter 11 of the United States Bankruptcy Code.

As a result of LSI's petition in Bankruptcy Court, MKRA raised concerns as to: (1) LSI's ability to perform under the Put Option; and (2) the viability of such Put Option, without modification, to serve as a reliable yield guarantee device. In response, LSI requested that MKRA further determine whether the continuation of the Lease to RMC would remain in the best interests of participants and beneficiaries of the Plans, given the fact that LSI had filed a petition for reorganization in Bankruptcy Court.

10. In order to make this analysis, MKRA engaged in an extensive review and analysis of the Property, including obtaining an additional evaluation of the soil conditions on the Property. In this regard, MKRA hired Jo Crosby and Associates (Crosby), a geotechnical consultant located in Mountain View, California. Crosby's report, issued in December 1992, updated the observations and conclusions of its two prior reports, dated February 22, 1991, and September 18, 1991, which had addressed the ability of the Property to support future commercial development upon completion of the mining operations. In addition, Crosby reviewed the status of the mining operation, and RMC's proposed plans for completion of the quarrying, and assessed the validity and costs of previously recommended soil remediation measures.

In its December 1992 report, Crosby stated that remediation of 525 acres of quarry floor would cost $7,000 per acre, plus up to $1,500 per acre for

geotechnical engineering, and supervision for a total cost of from $3,150,000 to $4,462,500. With respect to approximately 180 acres of the Property to be quarried in the future, Crosby estimated remediation would cost $5,200 per acre, plus $1,000 per acre for engineering and supervision, if certain recommendations were followed.

While remediation of the Property to enable commercial development at the termination of the Lease would have a high cost, paying this price would be optional to the then Property owner. There are no regulatory requirements to engage in so extensive a remediation. In fact, with regard to soil remediation of the Property upon completion of the mining, it is represented that the State of California does not have any requirements. However, the County of Sacramento requires upon completion of mining: (1) The rough grading of slopes—no greater than two feet horizontal to one foot vertical, (2) the seeding of such slopes within one year of the completion of mining, (3) the encouragement of natural growth in reclaimed areas, and (4) the maintenance of reclaimed areas free of derelict machinery and materials. In this regard, the Lease requires the lessee to reclaim portions of the Property that it has mined in accordance with the requirements of the law, and those of the Property Use Permit dated May 9, 1975, as revised on August 8, 1983. The lessee is also obliged to remove all improvements, fixtures, and equipment from the Property at the end of the Lease term. It is represented that RMC has complied with these reclamation requirements in all areas where mining has been completed.

11. After reviewing the information described in the paragraph above, MKRA concluded that continuing the Lease would be in the best interests of the participants of the Plans provided the Lease was amended, and LSI agreed to certain modifications in the guaranteed rate of return. Accordingly, LSI, the Trustee, and MKRA signed, in December 1991, a letter of understanding, and subsequently, on December 18, 1992, signed the final Guarantee Agreement, first mentioned in paragraph (b) of section I above. Though the Guarantee Agreement was executed by LSI, MKRA, and the Trustee, the agreement would only become effective upon approval by the Bankruptcy Court and was also conditioned on the Department granting LSI's application for exemption from the prohibited transaction provisions of the Act.

The Guarantee Agreement provided for a guarantee by LSI to the Master Trust of a fourteen percent (14%) annual internal rate[6] of return on $5,706,000, the purchase price paid by the Master Trust for the Property in 1983. It is represented that MKRA increased the internal rate of return to fourteen percent (14%) from the twelve percent (12%) it had previously recommended, due to changes in market conditions for institutional investment in real estate. The guaranteed return was to be provided either through a "put" of the Property to LSI or through the payment by LSI of a yield guarantee amount, subject to a $10,000,000 limit on LSI's liability. In order to secure the guaranteed return, LSI, under the terms of the Guarantee Agreement, was required to: (1) Post an irrevocable letter of credit in a form satisfactory to the Master Trust, or (2) deposit in an escrow account either cash (initially in the amount of approximately $6,700,000 but subject to annual adjustments) or liquid securities meeting pre-specified requirements in terms of investment grade and quality.

Further, the Guarantee Agreement required LSI to contribute, beginning in 1995, or if earlier, upon completion of payments to creditors pursuant to a confirmed plan of reorganization, up to $200,000 per year, subject to certain limiting conditions, which would be used to prepare and implement a program of soil remediation on the Property. Under the terms of the Guarantee Agreement, LSI had the right to purchase the Property at the higher of its fair market value or an amount necessary to provide the Master Trust with its 14% internal rate of return. If the purchase were to occur prior to December 31, 1998, LSI was required to pay an "early purchase premium" of up to $1 million to exercise this right. However, the Master Trust could offer the Property for sale to LSI without the "early purchase premium" at the higher of the fair market value of the Property or an amount necessary to provide the Master Trust with the 14% internal rate of return.

In connection with the Guarantee Agreement, LSI also agreed to the First Amendment to the Lease on the Property. As indicated in paragraph (f) of section II above, the First Amendment to the Lease will become effective on the date the grant of this proposed exemption is published in the **Federal Register**. The First Amendment will provide: (1) For notice to the Master Trust at least twelve months in advance of the monthly due date for non-guaranteed minimum annual royalties of RMC's intent not to pay such royalties to the Master Trust,[7] (2) for a limitation on the increase in the number of acres on the Property used as settlement ponds, and (3) for access to the Property by the Master Trust for soil remediation activities. In addition, the First Amendment deleted section 25 of the Lease which had provided LSI with a "right of first opportunity" to purchase the Property should the Master Trust determine to sell to third parties and corrected a typographical error in the language under section 23 of the Lease, with respect to the remedies available to the Master Trust in the event RMC, as lessee, attempted to occupy the Property or any part of the Property after termination of either the Lease or the lessee's right to possession of the Property.

12. Subsequently, LSI determined that, in lieu of its performance under the Guarantee Agreement, it would prefer to make a cash payment to the Master Trust. LSI believes such payment will increase the level of funding for the Plans and will assist in negotiations occurring in bankruptcy with the Pension Benefit Guaranty Corporation (the PBGC), respecting, among other things, potential underfunding of the Plans, and PBGC's contingent claims should the Plans be terminated with insufficient assets to satisfy benefit liabilities.

Accordingly, after discussions with MKRA and the Trustee of the Master Trust, in a letter dated July 9, 1993, LSI offered to pay the Master Trust $6,000,000 (the Proposed Offer), if the Master Trust would give up certain rights, as set forth in the Guarantee Agreement. In this regard, acceptance of the Proposed Offer is contingent upon: (a) the $6,000,000 payment being approved by the Bankruptcy Court; (b) the Department issuing a final administrative exemption; (c) the Trustee withdrawing all claims currently pending before the Bankruptcy Court filed on behalf of the Master Trust relating to or arising from the ownership of the Property by the Master Trust and the leasing of the

[6] It is represented that internal rate of return is defined as the rate of return at which the discounted future cash flows, including the reversion, equal the initial cash outlay (in this instance the initial purchase price of $5,706,016). The internal rate of return is also defined as the discount rate at which the net present value of a series of cash flows, including the initial investment outflow (investment amount) and the reversion, is zero.

[7] In the event such minimum non-guaranteed annual royalties are not paid, the Master Trust, as lessor, may at its election, upon not less than ten days written notice to RMC, the lessee, terminate the Lease and all of RMC's rights thereunder.

Property;[8] (d) the Master Trust providing LSI, RMC, their affiliates, officers, directors, and employees, and all fiduciaries of the Master Trust with a complete release of any claims against such parties based on the Lease of the Property to LSI or to RMC which may have been deemed to be a prohibited transaction under section 406 of the Act or section 4975 of the Code or which may involve a breach of fiduciary duty under section 404 of the Act;[9] and (e) the Master Trust releasing LSI from all obligations under the terms of the Guarantee Agreement. Notwithstanding the release of LSI from its obligations under the Guarantee Agreement, it is represented that the First Amendment to the Lease, which provides for the notice to the Master Trust of non-payment of certain royalties, the limitation on settlement ponds, access by the Master Trust for remediation activities on the Property, the deletion of the "right of first opportunity" for LSI to purchase the Property, and correction of certain typographical errors in the Lease, as described in paragraph 11 above, will become effective on the date this proposed exemption is granted.

13. MKRA has determined that the acceptance by the Master Trust of the Proposed Offer is feasible, in the interest of and protective of the participants and beneficiaries of the Plans, provided the Bankruptcy Court approves the $6 million dollar payment and provided that the obligations of LSI, as set forth under the Lease, will continue unaffected and will become obligations of LSI upon confirmation of a plan of reorganization. In this regard, MKRA has opined that the $6,000,000 cash payment, if received by April 30, 1994, will produce in combination with the Lease an overall transaction which is (i) superior to that produced by the Guarantee Agreement, (ii) is feasible, in the best interest of, and protective of the beneficiaries of the Master Trust, and (iii) is equal or superior to transactions which could be negotiated with unrelated third parties.

MKRA offers the following reasons for this opinion regarding the Proposed Offer:

(a) MKRA asserts that the Proposed Offer completely eliminates the risk of capital recovery and achievement of a current fair market yield. MKRA calculates that the Proposed Offer will generate an internal rate of return of 11.02%, assuming the $6,000,000 cash payment is received on or before April 30, 1994. MKRA explains that this means that from commencement of the Lease through 1993, the Master Trust will have received total consideration in an amount equal to its original investment of $5,706,000 plus an annual yield on that investment of 11.02% for each year during the term of the Lease through April 30, 1994—even if the Master Trust does not receive royalty payments or any reversionary amount for the Property subsequent to receipt of the $6 million dollar payment. MKRA concludes that, as the Proposed Offer eliminates the risk of recovery of capital, an internal rate of return of 11.02% represents a yield equal or superior to the current market yield required by pension funds. In the opinion of MKRA, such current market yield ranges from nine to ten percent (9% to 10%) on investments, such as single tenant properties leased for periods of ten (10) or more years on an absolute net basis to AAA-rated tenants.

(b) MKRA asserts that with the Proposed Offer there is greater opportunity for enhanced yield in excess of the fourteen percent (14%) rate of return provided for under the Guarantee Agreement. In analyzing the Guarantee Agreement, MKRA calculated that in order to generate an annual fourteen percent (14%) rate of return, the Property would have to have a reversionary value of $14,656,000 (only $10 million of which under the Guarantee Agreement would have been guaranteed by LSI) upon the expiration of the Lease in 1998. In analyzing the Proposed Offer, MKRA asserts that if the $6,000,000 cash payment were to be made by April 30, 1994, the reversionary value of Property in 1998 would only need to be $3,475,000 to generate a fourteen percent (14%) internal rate of return for the Master Trust. MKRA states in a letter dated January 27, 1994, that as of December 31, 1993, the estimated fair market value of the fee simple estate interest in the Property is $5,750,000. Because the current fair market value of the Property, as determined by MKRA, exceeds the $3,475,000 value which MKRA calculates would be needed in 1998 to generate a fourteen percent (14%) internal rate of return, MKRA concludes that the Proposed Offer produces an enhanced opportunity for the investment in the Property by the Master Trust to produce an internal rate of return in excess of fourteen percent (14%).

(c) MKRA asserts that under the terms of the Proposed Offer, a yield in excess of 11.02% is assured to the Master Trust. In this regard, MKRA explains that every dollar of reversionary value, and future royalties paid for the Property in excess of zero will produce a yield in excess of the 11.02% rate of return generated by royalties received to date by the Master Trust, plus the $6,000,000 cash payment. Notwithstanding the soils remediation issues that exist for the Property, MKRA expresses certainty that the Property will have some value upon expiration of the Lease. In this regard, MKRA explains that the acreage representing the plant site will not be mined, and accordingly, the value of that portion will not be affected. According to MKRA, the 100 acres on the Property representing the plant site have a current fair market value of approximately $1,200,000, as of January 27, 1994. Thus, MKRA states that, even if all of the areas which are mined and require remediation prior to future development prove to be valueless, the Property would still have a value of approximately $1,200,000, subject to future market conditions, when the Lease terminates. Assuming a $1,200,000 reversionary value for the

[8] It is represented that on October 15, 1991, the Trustee, on behalf of the Master Trust, filed a proof of claim in the Bankruptcy Court against LSI. The proof of claim alleges contingent liability of LSI to the Master Trust as a result of the continuation of the Lease and as a result of possible violations of the prohibited transaction restrictions of the Code and the Act. In addition, it is represented that the Trustee and the PBGC each filed contingent claims to cover the possibility of funding deficiencies or unfunded pension liabilities in the pension plans sponsored by LSI. In this regard, on October 15, 1991, the PBGC filed three separate proofs of claim against LSI. The PBGC's claims consist of: (1) a claim for $196,129 based on the alleged failure of the debtors to pay annual premiums; (2) a claim for $2,318,288 based upon the alleged failure of the debtors to meet minimum funding requirements in the event of the termination of certain plans; and (3) a contingent claim for $61,066,255 based on the potential liability should such plans be terminated with insufficient assets to satisfy all benefit liabilities.

[9] The Department notes that the decisions affecting the Master Trust made by the fiduciaries, including the Trustee and MKRA, are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. Section 404 of the Act requires that a fiduciary of a plan must act prudently, solely in the interest of the participants and beneficiaries of such plan, and for the exclusive purpose of providing benefits to such participants and beneficiaries. In this regard, the Department notes that in order to act prudently in determining to release the above-described claims and to accept the Proposed Offer on behalf of the Master Trust, the fiduciaries must consider, among other factors, the consequences of that decision in relation to those of alternative courses of action.

The Department is expressing no opinion, herein, whether any provision of part 4, subtitle B, title I of the Act will be violated by the decision of the Master Trust to provide a complete release of all claims against LSI, RMC, their affiliates, officers, directors, and employees, and any other fiduciaries of the Master Trust. In this regard, the Department notes that no relief from sections 406 and 407 of the Act is provided, herein, for transactions other than those specifically described in section I(a)–(c) of this proposed exemption. The Department further notes that the Plans' release of claims in connection with the Lease transaction does not affect the Department's ability to take any action that it deems appropriate.

Property and receipt of the $6,000,000 cash payment by April 30, 1994, MKRA calculates that upon expiration of the Lease the Property will have generated a 12.18% internal rate of return. In the opinion of MKRA, such a rate of return is well in excess of market yield requirements for comparable investments.

14. In summary, the applicant represents that the subject transactions satisfy the criteria for exemption, as set forth in section 408(a) of the Act because:

(a) LSI will pay $6,000,000 in a single lump-sum payment in cash to the Master Trust, not later than sixty (60) days following the later of (1) the date of the order of the Bankruptcy Court approving the payment, or (2) the date the grant of this exemption is published in the Federal Register;

(b) MKRA, acting as I/F on behalf of the Master Trust, has negotiated, reviewed, and approved the transactions, and has determined that the transactions were feasible, in the interest of, and protective of the participants and beneficiaries of the Plan invested in the Master Trust, as of the effective date of this exemption;

(c) the terms of the Lease, as modified by the First Amendment, are represented to be at least as favorable to the Master Trust, the Plans, and their participants and beneficiaries, as those which could have been obtained by the Master Trust in an arm's length negotiation with an unrelated third party under similar circumstances;

(d) MKRA, as I/F on behalf of the Master Trust, has managed the Property, and MKRA or its successors, will act as independent investment manager of the Property and will enforce the provisions of the Lease; for as long as such Property is leased to a party in interest;

(f) MKRA or its successors will monitor the fair market value of the Master Trust in order to insure that the fair market value of the Property will at no time exceed twenty percent (20%) of the total fair market value of the assets of the Master Trust; and

(g) LSI has either paid directly or reimbursed the Master Trust for any fees, other than trustee and investment management fees, incurred with respect to the ownership of the Property by the Master Trust, and in the future, the Master Trust will incur no fees in connection with the transactions, other than fees paid to the trustee and to the investment manager.

For Further Information Contact: Angelena C. Le Blanc, of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Wally L. Morgan IRA (the IRA) Located in Dallas, TX

[Application No. D–9581]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of three 50% undivided interests (the Interests) in each of three parcels of unimproved land (the Parcels) by the IRA to Wally L. Morgan (Mr. Morgan), a disqualified person with respect to the IRA; provided that the following conditions are satisfied: [10]

(a) The proposed sale will be a one-time cash transaction;

(b) The IRA in this transaction will receive the aggregate current fair market value of the three 50% Interests as established at the time of the sale by an independent qualified appraiser;

(c) The IRA will pay no expenses associated with the sale; and (d) Mr. Morgan as the sponsor of the IRA will be the only individual affected by the transaction.

Summary of Facts and Representations

1. The IRA is an individual retirement account which was established on October 12, 1987. Mr. Morgan is the sponsor of the IRA. As of March 31, 1993, the IRA had net assets valued at $627,414. The principal assets of the IRA consisted of those obtained as a result of rollover distributions from the Information Retrieval Method Inc. Employees Profit Sharing Plan (the Plan), which was terminated in October, 1987. It is represented that no additional contributions have been made to the IRA.

2. Part of the distributions from the Plan rolled over into the IRA consisted of the three 50% undivided Interests in the three Parcels of unimproved land. Parcel I contains 1.2436 acres and is located at the southeast corner of Denton Drive and Carlisle Street in Denton County, Texas. Parcel II contains .959 acres and is located at 483 Bennett Lane, and Parcel III contains .923 acres and is located at 500 Bennett Lane, Denton County, Texas. Parcel II is located on the north side of Bennett Lane and Parcel III is located on the south side of Bennett Lane. The remaining 50% undivided interests in the Parcels are held as an asset in Jack Brandenburger's IRA. Mr. Brandenburger has no relationship to Mr. Morgan or to Mr. Morgan's IRA.

3. The Parcels were originally acquired from unrelated parties by the Plan in three separate cash transactions. Specifically, Parcel I was acquired on August 15, 1984, for $95,059.83. Parcel II was acquired on January 20, 1984, for $54,450. Parcel III was acquired on December 16, 1983, for $69,397.14. It is represented that the Parcels were acquired as vacant land and remain undeveloped. Upon the termination of the Plan in October 1987, the aggregate fair market value of the Parcels was determined by three independent real estate brokers at $284,550, and, therefore, the three 50% Interests had a value of $142,275.

4. The Parcels were appraised on September 28, 1993 (the Appraisal), by Ted Brooks, MAI, an independent and qualified appraiser with Noyd & O'Connell, Incorporated (Mr. Brooks). In establishing the fair market value of the Parcels, Mr. Brooks relied on the direct sales comparison approach to value, and determined that the fair market value of Parcel I was $22,000, for Parcel II the fair market value was $21,000, and for Parcel III the fair market value was $20,000. Therefore, the aggregate fair market value for the Parcels as of September 28, 1993, was $63,000, and, as such, the three 50% Interests had an aggregate fair market value of $31,500. Mr. Morgan represents that the Parcels are not encumbered by any debt, and that no other disqualified person or related party owns or has owned land adjacent to the Parcels. Mr. Morgan further maintains that the Parcels were never used by any disqualified person.

5. It is represented that the proposed transaction is in the best interest and protective of the IRA because the transaction will enable the IRA to divest itself of a non-income producing asset that has depreciated in value since original acquisition and will provide the IRA with liquidity. The transaction is protective of the IRA because as a result of the sale the IRA will receive the current fair market value of the three 50% Interests established at the time of the sale by an independent qualified appraiser.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

(a) the proposed sale will be a one-time cash transaction;

[10] Pursuant to 29 CFR 2510.3–2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

(b) the IRA in this transaction will receive the current fair market value of the three 50% Interests established at the time of the sale by an independent qualified appraiser;

(c) the IRA will pay no expenses associated with the sale;

(d) the sale will provide the IRA with liquidity; and

(e) Mr. Morgan as the sponsor of the IRA will be the only individual affected by the transaction.

Notice to Interested Persons

Because Mr. Morgan is the sole participant of the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

Potter Law Firm Retirement Plan (the Plan) Located in Tyler, TX

[Application No. D–9617]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) of a certain one-half undivided interest in real property (the Property) by the Plan to Potter, Minton, Roberts, Davis & Jones, P.C., (the Employer) a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not suffer any loss nor incur any expenses in the proposed transaction; (3) the Plan receives as consideration the greater of either the fair market value of the property as determined by an independent appraiser on the date of the Sale, or receives all the funds expended by the Plan in acquiring and maintaining the Property; and (4) the trustee of the Plan has determined that the proposed Sale is appropriate for the Plan and is in the best interests of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. The Plan is a defined contribution plan, designated as a profit sharing plan, with 29 participants and beneficiaries and total assets of approximately $3,169,000, as of September 30, 1993. The Employer and NationsBank of Texas, N.A., located in Dallas, Texas, as trustee (the Trustee), are co-fiduciaries of the Plan.

The Employer, which sponsors the Plan, is a Texas professional corporation engaged in the practice of law and is located in Tyler, Texas.

2. The Property consists of an undivided one-half interest in 86.751 acres of unimproved land, subject to no zoning restrictions, located in the E. Stephensen Survey, A–940, Smith County, Texas. It is described as 40 percent wooded with the remainder open with a scattering of large trees. There is 512 feet of frontage on County Road 383. A year-round creek borders on the back of the Property. Utilities are available in the area of the location of the Property.

The Property was acquired by the Plan for the consideration of $67,232.02 on February 6, 1985, from a Mr. and Mrs. Jack N. Zorn, who are unrelated persons with respect to the Plan and the Employer. The Trustee represents that the Plan incurred expenses totalling $9,185.56 in maintaining the Property from the date of purchase in 1985 through 1993, consisting of property taxes, appraisal fees, mowing charges, and other expenditures. No income has been received by the Plan from its ownership of the Property.[11]

The Trustee has had the Property appraised each year. The last appraisal was on January 25, 1994, by James E. Justice, MAI of Real Estate Appraisal Services, Inc., Tyler, Texas, who determined that the fair market value of the entire Property was $100,000. One year earlier, Mr. Justice, in an appraisal of the Property on January 15, 1993, determined that the fair market value of the entire Property was $110,000.

3. The applicant represents that at the time the Plan purchased its interest in the Property in 1985 real estate prices had been increasing, and the fiduciaries of the Plan expected that after a few years the property could be sold for a profit. However, the applicant represents that the real estate market declined in activity and values during the years following the acquisition of the Property by the Plan, resulting in the Plan also incurring expenses with no correlating income.

The owner of the other one-half undivided interest in the Property, Mr. Herbert Buie, as trustee of an unrelated trust, has stated that there is no objection by him to the Plan selling its interest in the Property to the Employer. Furthermore, Mr. Buie states that he has no interest in purchasing the Plan's interest in the Property and knows of no one that desires to purchase the Plan's interest.

Three local realtors, PreJean Real Estate, Burns & Noble, and Simmons, all of Tyler, Texas, stated in separate documents that there is no market for the one-half undivided interest in the Property owned by the Plan, and further, that there is difficulty in obtaining financing for the purchase of a fractional interest in unimproved land.

4. The Employer, as the applicant, proposes to purchase the Property from the Plan for either the higher of the fair market value of the Property, or for the sum of all the expenditures the Plan incurred in acquiring and maintaining the Property. The applicant and the Trustee represent that the Property is an illiquid investment for the Plan, which is depreciating in value and incurring expenses while producing no income for the Plan. Further, the applicant and the Trustee find that the investment prevents the Plan from utilizing a computerized daily accounting system which would allow each participant to select an individual asset mix.[12]

The applicant represents that numerous inquiries have been made with the co-owner and the local realtors regarding the marketability of the Property. The applicant has concluded that there is no purchaser in the forseeable future of the Plan's one-half interest in the Property. In addition, the Trustee represents that the transaction is appropriate and in the best interest of the Plan and its participants and beneficiaries.

The applicant represents that the Plan will not incur any expenses from the proposed Sale of the Property or from obtaining an exemption from the prohibited transaction provisions of the Act.

5. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because (a) the Sale of the Property involves a one-time transaction for cash; (b) the Plan will not incur any

[11] The Department notes that the decisions to acquire and hold the Property are governed by fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard the Department herein is not proposing relief for any violations of part 4 of the Act which may have arisen as a result of the acquisition and holding of the Property.

[12] In this proposed exemption the Department expresses no opinion as to whether the Plan will satisfy the requirements of section 404(c) of the Act.

expenses incidental to the Sale; (c) the Plan will receive as consideration for the Sale the greater of either the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser, or will receive all of the funds expended by the Plan in obtaining and maintaining the Property; (d) the Sale will permit the Plan to reinvest illiquid assets into income producing, liquid assets; and (e) the Plan will avoid the expenses and risks involved in retaining and developing the Property.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 3rd day of March, 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–5249 Filed 3–7–94; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–016]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: March 21–22, 1994, 8:30 a.m. to 5:30 p.m.; and March 23, 1994, 8:30 a.m. to 3 p.m.

ADDRESSES: The National Aeronautics and Space Administration, 300 E Street, SW., 5th Floor Conference Room, MIC–5, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Lawrence J. Caroff, Code SZF, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0351.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Overview of Office of Space Science Status.
—Office of Life and Microgravity Sciences and Applications Outlook.
—Office of Mission to Planet Earth Outlook.
—Office of Management and Budget Outlook.
—Strategic Planning.
—Divisional Reports.
—Subcommittee Reports.
—Discussion and Writing Groups.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: March 3, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 94–5227 Filed 3–7–94; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–01786; License No. 19–00296–10]

National Institutes of Health; Receipt of Petition Under 10 CFR 2.206

Notice is hereby given that by Petition dated December 2, 1993, Arlene S. Allen, on behalf of the North Bethesda Congress of Citizens Associations, Inc. (North Bethesda Congress or Petitioner) requested that the Nuclear Regulatory Commission take action with regard to the National Institutes of Health (NIH). Petitioner requests that: (1) The NRC suspend License Condition 24, which permits NIH to dispose of licensed materials by incineration, pending resolution of two regulatory issues, specifically completion of an environmental report or environmental assessment regarding incineration of radioactive waste at the NIH Bethesda campus and monitoring to ensure that radioactive effluent releases are within regulatory limits; (2) the NRC provide Petitioner with a copy of the NRC environmental assessments and/or safety evaluations which provide the bases for License Condition 21, which excepts NIH from the sanitary sewer system limits of 10 CFR 20.303(d), and for License Condition 28, which approves the low level radioactive waste storage facility at NIH's Poolesville campus; and (3) the NRC provide Petitioner with a copy of future correspondence between the NRC and NIH regarding the Petition.

Petitioner asserts as bases for these requests that: NIH has not completed or submitted to the NRC an environmental report regarding radiological releases from incinerators at the Bethesda campus, and the NRC has not issued an environmental assessment or impact statement regarding NIH radiological emissions, as required by the National

Environmental Policy Act of 1969 and 10 CFR 51.21, 51.45 and 51.60(b); licensing the disposal of radioactive waste by incineration is a federal action subject to the NEPA process; because releases from the NIH incinerators are capable of exceeding regulatory limits and will increase over the next few years, and because total radiological emissions from NIH are sufficient to warrant environmental analysis, the continued burning of radioactive waste by NIH without an environmental report and environmental assessment are in noncompliance with NRC environmental regulations; although NRC CITED NIH for its failure to adequately monitor radioactive effluents and NIH committed to install instrumentation for continuous monitoring as a corrective action for having exceeded its yearly radioactive effluent release limit to unrestricted areas for 1987, no continuous monitoring for radioactive airborne effluents exists for the NIH incinerator stacks, it is not clear that the box monitoring system installed by NIH adequately detects radioactive waste, and small amounts of iodine continue to be identified in the incinerator ash, indicating that medical waste still gets into the incinerators; and it is unclear that NIH methods to assess radioactive effluent releases at the incinerators satisfy regulatory requirements and provide assurance that part 20 limits are being met.

Petitioner's request for suspension of NIH's authorization to dispose of licensed material by incineration pending resolution of the regulatory concerns raised by the Petition was denied by letter dated February 24, 1994. In the letter it was noted that NIH has permanently discontinued operation of two of their three incineration units, and they plan to temporarily discontinue operation of the third unit within the next month or two to upgrade the scrubber system in that unit and to produce an environmental study.

The Petition has been referred to the Director of the Office of Nuclear Material Safety and Safeguards pursuant to 10 CFR 2.206. As provided by Section 2.206, appropriate action will be taken with regard to the specific issues raised by the Petition in a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 24th day of February, 1994.

For The Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–5234 Filed 3–7–94; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting; Site Assessment for Critical Facilities, Seismic Faulting, Update on the ESF and Repository Design, Saturated Zone Hydrology, and Ground-Water Travel Time—April 11–12, 1994, Reno, NV

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board will hold its spring meeting April 11–12, 1994, in Reno, Nevada. The meeting, which is open to the public, will be held at the Peppermill Hotel, 2707 S. Virginia St., Reno, Nevada 89502; telephone (702) 826–2121, fax (702) 826–5205. Major topics at the two-day meeting will include site assessment for critical facilities, seismic faulting discoveries/mapping at Yucca Mountain, saturated zone hydrology at Yucca Mountain, ground-water travel time, and an update on the status of activities regarding the exploratory studies facility and the repository design.

On April 11, presentations will focus on site assessment and licensing of critical and other controversial facilities in the United States and several other countries. The main purpose of the day's sessions will be to define any lessons learned that may be useful to the Department of Energy (DOE) in the planning of, and to the Board in the evaluation of, the Yucca Mountain program. Presentations will cover a variety of facilities, including the proposed Martinsville (Illinois) low-level radioactive waste site, the successful siting of a hazardous waste facility in Alberta (Canada), the proposed Gorleben high-level radioactive waste site in Germany, the Waste Isolation Pilot Project in New Mexico, the Diablo Canyon nuclear power plant in California, and the proposed Auburn Dam in California. At the end of the day, presenters, the Board, and DOE managers will participate in a round-table discussion of the issues raised during the day and their applicability to the Yucca Mountain project.

On January 12, the morning sessions will include presentations on recent investigations of the Ghost Dance fault and the Sundance fault: What information has come to light? What is its significance with respect to Yucca Mountain geology and the proposed repository? What are future plans to investigate these features at the surface and in the underground? In addition, the Board will hear a brief update on progress at the exploratory studies facility. Most of the day will be devoted to a review of saturated zone hydrology at Yucca Mountain including the role of the saturated zone in waste isolation. Among other presentations, the DOE will discuss regulatory criteria for ground-water travel time. A round-table discussion of the issues raised in presentations on saturated zone hydrology and ground-water travel time will end the day's schedule.

The Board has invited representatives of the DOE and its contractors, the U.S. Geological Survey, Sandia National Laboratories, and the state of Nevada, along with representatives from a variety of projects and programs worldwide to make presentations and participate in the round-table discussions.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's spent nuclear fuel and defense high-level waste. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for disposal of that waste.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Victoria Reich, Board librarian, beginning May 24, 1994. For further information, contact Frank Randall, External Affairs, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (703) 235–4473; (FAX) 703–235–4495.

Dated: March 2, 1994.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 94–5223 Filed 3–7–94; 8:45 am]

BILLING CODE 6820–AM–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Request for Proposals: Correction

AGENCY: Prospective Payment Assessment Commission.

ACTION: Correction Notice.

Correction: In the notice document 94–3838 beginning on page 8488 in the issue of Tuesday, February 22, 1994, the issuance date of RFP 02–94–ProPAC was incorrect. The notice should read that RFP 02–94–ProPAC wil be issued on or about March 14, 1994.

Dated: March 2, 1994.

Donald A. Young,

Executive Director.

[FR Doc. 94–5239 Filed 3–7–94; 8:45 am]

BILLING CODE 6820–BW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33697; File No. SR–NASD–93–58]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Handling of Customer Limit Orders

March 1, 1994.

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 October 13, 1993 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is proposing an Interpretation to the Rules of Fair Practice to require that member firms not trade ahead of their customers' limit orders in their market making capacity. The Interpretation would make it a violation of just and equitable principles of trade for member firms to hold unexecuted customer limit orders and trade ahead of those orders in the firm's market making capacity without filling the orders under the specific terms and conditions with which the orders had been accepted.

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

The Association is proposing an Interpretation to the Rules of Fair Practice that would make it a violation of just and equitable principles of trade for member firms that hold unexecuted customer limit orders to trade ahead of those orders in the firm's market making capacity. In July 1993, the NASD solicited member comment on eliminating a disclosure safe harbor for members trading ahead of customer limit orders.[1] In September 1993, the Board reviewed comments received from members and others and took action to eliminate the disclosure safe harbor and to replace it with a prohibition against members' trading ahead of their own customer limit orders.

The issue of limit order protection in the NASDAQ market was brought to the forefront in 1985 when a customer alleged that a member firm had accepted his limit order, failed to execute it, and failed to discharge its fiduciary duties by trading ahead of the customer's order. In the Manning decision, the NASD found that upon acceptance of a customer's limit order, a member undertakes a fiduciary duty and cannot trade for its own account at prices more favorable than the customer's limit order unless clear disclosure is provided and there is an understanding by the customer as to the priorities that will govern the order. The SEC affirmed the NASD decision.[2] After input from a number of members, the NASD proposed a "safe harbor" for members to fulfill their fiduciary obligations with disclosure when the customer's account was first opened and periodically thereafter.[3] The language set out in the proposed safe harbor put customers on notice that the firm accepting a limit order would execute that order only when the inside bid or offer on Nasdaq reached the limit price and that the member might, in its market making capacity, trade ahead of that order. The membership approved the proposed language, and the NASD submitted the rule to the SEC.[4]

In July 1993, the NASD Board of Governors reviewed the handling of limit orders in NASDAQ securities and concluded that the continuation of the disclosure exception appeared inappropriate. Because of the significance of this change to The NASDAQ Stock Market, a notice was issued soliciting input on how elimination of the safe harbor would impact the operation of member firms and the treatment of investors' orders. The NASD also solicited comment on what if any unintended effects or unacceptable consequences would ensue if rules prohibiting trading ahead of customer limit orders were imposed on member firms. Specifically, comment was requested on the impact of applying the requirements on integrated broker-dealers handling their own customer order flow; on customer limit orders received from other member firms (so-called member-to-member trades); and on market liquidity.

In response to the notice, the NASD received 29 comment letters from members and trade associations, including the Security Traders Association ("STA"), STA of New York ("STANY"), and Securities Industry Association ("SIA"). The vast majority of comments supported elimination of the disclosure safe harbor for market makers trading ahead of their own retail, or "commission paying," clientele. Commenters noted that elimination of the safe harbor would level the playing field for investors, enhance the image of The NASDAQ Stock Market, and instill greater confidence with investors that their NASDAQ limit orders would be handled fairly. Some commenters noted that the NASD should distinguish between retail and institutional customer limit orders, so that a market maker's ability to commit capital to large institutional orders would not be impaired by a narrow reading of "trading ahead." Members believed that the new rule language might interfere with a market maker's ability to commit capital to large institutional orders as filling these orders might necessarily involve a trading strategy to cover short positions or to buy stock along with the institution that on its face might appear to be trading in front of those or other customer limit orders. Other commenters believed that distinguishing between institutional and

[1] See Notice to Members 93–49 (July 23, 1993).

[2] In the Matter of E.F. Hutton & Co., Securities Exchange Act Release No. 25887 (July 6, 1988), 41 SEC Doc. 473.

[3] See Notice to Members 90–37 (June 1990).

[4] SR–NASD–89–10 (March 16, 1989). With submission of this rule proposal, the NASD, under separate cover, is withdrawing SR–NASD–89–10.

retail customers was not necessary because the proposed rule language that allows members to establish specific terms and conditions on each order adequately covers handling of institutional orders.

Many commenters, including STA, SIA and STANY, argued that the NASD should draw a distinction between orders from a member's own customers and orders from another broker/dealer. They pointed out that unlike an integrated firm which may charge a mark-up or commission to its customers, the only profit potential for orders received from other members lies in trading revenues derived from the spread. If the effect of the NASD's proposed rule were to require a market maker to satisfy a limit order sent from another broker/dealer when the market maker traded at the same price, these commenters agreed that the NASD would be in effect forcing the market makers to handle the order at no profit or indeed at a loss net of processing costs. These commenters also argued that alternative means of compensating market makers, such as sharing the order entry firm's commission, were infeasible given the structure of the NASDAQ market. As a result, these commenters argued that extension of the Interpretation to member-to-member orders would dramatically reduce market maker commitment. Further, several members argued that by extending the requirements to other members' customer limit orders, the NASD would be inappropriately expanding the requirements of a fiduciary in the securities markets.

Many also commented on the new rule's potential for unintended consequences on market liquidity, including a significant increase in limit orders as opposed to market orders, loss of market maker commitment, wider spreads and increased volatility. Members pointed out that the NASD had not yet fully explored the economic ramifications of the new requirements and noted that further economic analysis should be undertaken prior to rulemaking.[5]

After full consideration of the concerns articulated in the comment process, the NASD is proposing to eliminate the disclosure safe harbor for member firms that hold their own customer limit orders and trade ahead of those orders and to make such actions a violation of just and equitable principles of trade. The language of the Interpretation establishes that a member holding its customers' limit order may not continue to trade its market making position without executing that limit order under the specific terms and conditions that the customer understands and accepts. If the member does trade ahead of its customer, it will be in violation of article III, section 1 of the Rules of Fair Practice regarding just and equitable principles of trade.

The NASD believes that it is inappropriate to distinguish between the limit order protection provided fee-paying, or retail customers, and non-fee paying, institutional clientele. The NASD recognizes, however, that filling institutional-sized orders generally involves best-effort commitments and trading strategies other than a straight acceptance of a limit order. Firms accepting institutional orders on a best-efforts basis, that may involve trading to a cover short position or buying stock along with the institution, would not be in violation of the rule as long as the firm maintains a clear understanding with its institutional clientele of the terms under which the order is being executed. Accordingly, the NASD does not distinguish between institutional and retail customers in the Interpretation because the proposed language that allows members to establish specific terms and conditions on each order clearly encompasses institutional orders. This language recognizes that institutions generally do not leave standard limit orders with market makers. Instead, in return for the willingness of member firms to put up substantial capital to provide liquidity for large orders, institutions generally only hold market makers to a best-efforts standard in attempting to execute their order at a specific price. The ability of the member firm and the institution to reach agreement on the terms and conditions of the order would allow them to negotiate these arrangements without subjecting the member firm to the requirements of the proposed rule.

Further, the NASD has determined to temporarily defer application of the Interpretation to member-to-member orders in order to avoid any unintended consequences from a broader application of the rule. The NASD will form a special task force to examine ramifications of extending limit order protections to include member-to-member transactions. The task force will analyze the effect of the proposal on market liquidity, volume of limit orders, market maker commitment, spreads and volatility. The NASD believes that the issues raised by customer limit orders passed from one member firm to a second member firm are very complex. Dealers that trade as "wholesale" market makers, whether exclusively or as a part of an integrated firms' business, have profit potential only in the trading revenues received—they do not rely on commissions or commission equivalents as revenue to support their trading activities. Relying on pure trading profit and loses is unique to a dealer market and cannot be compared to a specialist that executes transactions for members on an exchange while charging a fee for that service. Accordingly, requiring a market maker to execute such limit orders any time it trades for its own account at the same price effectively eliminates any opportunity for that market maker to profit on that trade. The NASD is concerned that the economic implications for market makers and the potential impact on liquidity and spreads in the NASDAQ stock market have not fully been reviewed. For these reasons, the NASD will form a task force composed of diverse industry and investor interests to review the issues raised by limit orders passed from one member to another.

In the Interpretation, the NASD also emphasizes that brokers forwarding orders to dealers for execution continue to be subject to their duties of best execution. Firms owe fiduciary duties of best execution to their customers and the NASD emphasizes that order entry firms should continue to routinely monitor the handling of their customer limit orders for quality of execution.

The NASD believes that elimination of the safe harbor for a broker/dealer's own customer orders is squarely in line with the original Manning decision which was premised on a firm's fiduciary duty not to trade ahead of its own customer order.[6] Feedback from members commenting on the new rules indicates that integrated market makers on the whole do not trade ahead of their own customer orders, and accordingly, eliminating the safe harbor would not materially or adversely affect the way these market makers conduct their business today.

Finally, as the handling of customer limit orders entails duties that are not subject to a disclosure safe harbor,

[5] Some members also argued that procedural due process was being by-passed by framing the new requirement as an Interpretation to the just and equitable principles of trade standards of Article III, Section 1 of the NASD Rules of Fair Practice. The NASD notes that these comments misconstrue the regulatory process involved with NASD Interpretations. All NASD Interpretations are submitted to the SEC for review, publication in the Federal Register and public comment prior to SEC action.

[6] In this regard, the NASD Interpretation on the obligation to protect the firm's customer limit orders will also apply to firms that control or are controlled by another member firm, e.g., where the order entry firm is a broker that owns or controls the executing dealer.

nothing in the rule compels market makers to accept limit orders from their customers or from other broker/dealers.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. The new requirement ensures protection of investor's limit orders when placed with market making firms and enhances the quality of the marketplace. The affirmative obligation for firms to protect their customer limit orders and to give them standing over their own market making activity also enhances opportunities for price improvement which is a benefit for public investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were solicited in Notice To Members 93–49 and the content of those comments are summarized in the description of the rule proposal in part II(A) above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will: A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. In this regard, the Commission notes that in the recently issued Market 2000 study, the Division of Market Regulation recommends that the NASD revise its proposal to prohibit broker-dealers from trading ahead of all customer limit orders for NASDAQ/NMS securities.

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 communication 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 March 29, 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. 94–5205 Filed 3–7–94; 8:45 am]

BILLING CODE 8010–01–M

[File No. 81–916]

Application and Opportunity for Hearing; Treasure Island Finance Corporation and Treasure Island Corporation

March 2, 1994.

Notice is hereby given that Treasure Island Finance Corporation and Treasure Island Corporation (the "Applicants") have filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting the Applicants from certain reporting requirements under section 15(d) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested persons, not later than March 28, 1994, may submit to the Commission in writing his or her views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reasoning for such request, and the issued of fact or law raised by the application which he or she desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–5206 Filed 3–7–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

El Paso District Advisory Council; Public Meeting

The U.S. Small Business Administration El Paso District Advisory Council will hold a public meeting from 9 a.m. to 11:30 a.m. on Thursday, March 24, 1994, at the State National Bank, 221 N. Kansas Street, Old El Paso Room, 7th floor, El Paso, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John E. Scott, District Director, U.S. Small Business Administration, 10737 Gateway Blvd. West, suite 320, El Paso, Texas 79935–4996, (915) 540–5586.

Dated: February 24, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–5275 Filed 3–7–94; 8:45 am]

BILLING CODE 8025–01–M

Dallas/Fort Worth District Advisory Council; Public Meeting

The U.S. Small Business Administration Dallas/Fort Worth Distict Advisory Council will hold a public meeting at 9 a.m. on Wednesday, March 30, 1994, in the Forum Room of

the South Campus, Tarrant County Junior College, 5301 Campus Drive, Fort Worth, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 4300 Amon Carter Blvd., suite 114, Fort Worth, Texas 76155, (817) 885–6500.

Dated: February 24, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–5276 Filed 3–7–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Legal Adviser

[Public Notice 1955]

Claims for Property Located in Albania

On July 28, 1993, the Department of State published a notice that Albania had enacted two laws concerning return of expropriated or confiscated properties in Albania. Law No. 7698, which addressed non-agricultural properties, set a deadline of November 15, 1993 for submitting claims. That deadline has been extended to March 31, 1994. Law No. 7699, which addressed agricultural properties, set a deadline of May 15, 1994 for submitting claims. That deadline has not been changed.

General information concerning the Albanian laws can be obtained from the previous notice at Volume 46 of the **Federal Register**, page 40461. Further information must be obtained from the Government of Albania. Claimants are advised that the Department of State does not have information other than that contained in the previous Federal Register notice and in the text of the laws. Copies of the Albanian laws may be obtained by writing or telephoning the State Department at the following address: Office of International Claims and Investment Disputes, Office of the Legal Adviser, 2100 K Street, NW., Washington, DC 20037–7180, telephone (202) 632–6686.

Dated: February 24, 1994.

Sean D. Murphy,

Deputy Assistant Legal Adviser for International Claims and Investment Disputes.

[FR Doc. 94–5201 Filed 3–7–94; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 94–016]

Chemical Transportation Advisory Committee (CTAC) Subcommittee on Marine Vapor Control Systems

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Marine Vapor Control Systems of the Chemical Transportation Advisory Committee will meet to review tank vessel cleaning facility operations and evaluate the technical and safety aspects of potential control technologies which will allow these facilities to meet air quality emissions standards. The meeting will be open to the public.

DATES: The meeting will be held on April 19 and 20, 1994, from 8:30 a.m. to 5 p.m. daily. Written material should be submitted no later than April 11, 1994.

ADDRESSES: The meeting will be held at the offices of the American Bureau of Shipping, 16855 Northchase Drive, Houston, Texas, 77060. Personnel attending the meeting should report to the main floor reception area for direction to the meeting room. Written material should be submitted to LCDR Robert F. Corbin, Commandant (G–MTH–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: LCDR Robert F. Corbin, Commandant (G–MTH–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, telephone (202) 267–1217.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2§ 1 et seq.

One section of the 1990 Amendments to the Federal Clean Air Act (CAA) requires states to achieve and maintain a 15% reduction in their Volatile Organic Compound (VOC) emissions level below the 1990 base year level by 1996 in non-attainment areas within the individual states. States are presently developing methods to achieve required compliance levels. One state recently passed state regulations that will require vessels that have carried certain VOC cargoes and are being gas-freed and/or cleaned to utilize a marine vapor control system or an alternate means of control approved by the state at the tank vessel cleaning facility. It is anticipated other states will develop similar regulations as a means of complying with the CAA Amendments for their states. The purpose of this meeting is to conduct a detailed review of tank vessel cleaning facility gas-freeing and tank cleaning operations in order to evaluate potential control technologies that will allow these facilities to meet air quality emissions standards while ensuring a high level of safety for facility and vessel personnel is maintained. As a result of this review, the Subcommittee will develop recommendations for revising existing safety guidelines for tank vessel cleaning facilities.

Dated: February 24, 1994.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–5287 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

[CGD 94–015]

National Offshore Safety Advisory Committee Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various offshore safety related issues. The meeting will be open to the public.

DATES: The meeting will be held on Friday, April 8, 1994, from 1:30 p.m. to 4:30 p.m. Written material should be submitted not later than March 25, 1994.

ADDRESSES: The meeting will be held in Room 4234, of the NASSIF Building, 400 7th Street SW., Washington, DC. Written material should be submitted to CDR Adan Guerrero, Executive Director, Commandant (G–MVI–4), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: CDR Adan Guerrero, Executive Director, National Offshore Safety Advisory Committee (NOSAC), room 1405, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–2307.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 1 et seq. The agenda will include discussion of the following topics:

(1) Clean Air Act of 1990;

(2) ISM Code Implementation for the Offshore Industry;

(3) Periodic Verification of Lightship;

(4) Revision of Subchapter "L" on OSVs and Liftboats;

(5) IMO Items Affecting the Offshore Industry;

(6) Coast Guard Regulatory Process Improvements; and

(7) National Pollution Fund Center Activities.

Attendance at the meeting is open to the public. With advance notice, and at the discretion of the Chairman, members of the public may make oral presentations at the meeting. Persons wishing to make oral presentations should notify the Executive Director, listed above under ADDRESSES, no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each Committee member, 20 copies of the written materials should be submitted to the Executive Director no later than March 25, 1994.

Dated: February 24, 1994.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–5283 Filed 3–7–94; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

Revision of the 1958 United Nations Economic Commission for Europe Agreement Regarding the Regulation of Motor Vehicle Equipment and Parts

AGENCY: National Highway Safety Administration (NHTSA), DOT.

ACTION: Notice.

SUMMARY: This notice announces that NHTSA and the U.S. Environmental Protection Agency (EPA), on behalf of the United States Government, will participate in negotiations regarding a proposed revision to the 1958 United Nations Economic Commission for Europe (UN/ECE) Agreement Concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts. The Agreement provides procedures for establishing uniform regulations regarding new motor vehicles and motor vehicle equipment and for reciprocal recognition of such regulations. Regulations adopted by Contracting Parties govern the approval of motor vehicles and equipment for sale in those countries.

The United States is a member of the UN/ECE, but is not a Contracting Party to the 1958 Agreement. Depending on the outcome of these negotiations, it may be appropriate for the United States to become a Contracting Party to the Agreement as it may be revised. However, a decision has not yet made regarding that course of action.

Notwithstanding the revised Agreement's goal of harmonization of motor vehicle standards, were the United States to become a Contracting Party, it would not adopt a regulation that would lower the level of protection provided by current U.S. domestic safety and environmental standards. Further, there would be no change in the process by which Federal Motor vehicle regulations are adopted and put into effect in the United States. These regulations would continue to be promulgated pursuant to legislation enacted by Congress and through rulemaking proceedings conducted under the Administrative Procedure Act and any other applicable statute. Thus, a regulation under the proposed revision to the 1958 Agreement could be adopted by the United States only if the relevant Federal agency complies with these requirements.

FOR FURTHER INFORMATION CONTACT: Mr. Frances J. Turpin, Director, Office of International Harmonization, National Highway Traffic Safety Administration, room 5220, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–2144; or Mr. Thomas M. Baines, Senior Technical Advisor, U.S. Environmental Protection Agency, 2565 Plymouth Rd., Ann Arbor, MI 48105, telephone (313) 668–4366. Copies of the 1958 Agreement and of the proposed revision to the Agreement are available from Mr. Turpin or Mr. Baines upon request.

Telephone inquiries addressing safety standard issues should be directed to Mr. Turpin and those concerning environmental standard issues should be directed to Mr. Baines.

SUPPLEMENTARY INFORMATION: This notice announces that NHTSA and EPA will participate, on behalf of the United States Government, in negotiations regarding a proposed revision to the 1958 United Nations Economic Commission for Europe (UN/ECE) Agreement Concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts (the "1958 Agreement" or the "Agreement"). The Agreement is administered by the Working Party on the Construction of Vehicles (WP29), a subsidiary group of the ECE. Negotiations concerning the proposed revision of the Agreement involve countries that are Contracting Parties to the 1958 Agreement and other interested countries, such as the United States.

The 1958 Agreement

The 1958 Agreement provides procedures for establishing uniform regulations regarding new motor vehicles and motor vehicle equipment and for reciprocal acceptance of approvals issued under these regulations. Regulations adopted by Contracting Parties pursuant to the Agreement govern the approval of motor vehicles and motor vehicle equipment for sale in those countries. The Agreement was originally intended to address safety standards but has since been amended to encompass environmental (air and noise pollution emission) and energy standards. The United States is a member of the UN/ECE, but is not a Contracting Party to the Agreement.

The goal of the Agreement and of WP29 is to promote harmonization of motor vehicle regulations and otherwise to facilitate trade in motor vehicles and motor vehicle equipment. The Agreement provides a mechanism of Contracting Parties to develop harmonized motor vehicle regulations, and for reciprocal acceptance of approvals issued under these regulations. The Agreement requires compliance with regulations through type approval (i.e., testing or witness of testing by a government-designated authority and government approval), the system generally used by European countries.

Under the Agreement, any two or more Contracting Parties wishing to adopt a regulation may propose a draft regulation for annexation to the Agreement. The draft regulation enters into force as a regulation annexed to the Agreement with respect to each Contracting Party that has declared its intention to adopt it. A Contracting Party that has adopted an annexed regulation is allowed to grant type approvals for motor vehicle equipment and parts covered by the regulation and is required to accept the type approval of any other Contracting Party that has adopted the same regulation. Regulations under the Agreement are required to include test methods and conditions for granting type approvals.

A Contracting Party may choose not to adopt any regulation annexed to the Agreement. The regulation would therefore have no effect on the Contracting Party. The Agreement also contains a mechanism for a Contracting Party, upon notice, to adopt a regulation after it has been annexed to the Agreement or to stop applying a regulation that it has already adopted.

An amendment to an annexed regulation may be proposed by any Contracting Party that is applying the regulation. The proposed amendments may be vetoed, however, by the Contracting Party that is applying the regulation.

The effectiveness of the 1958 Agreement is demonstrated by the integration of a single market in motor vehicles within the member States of the European Union (EU) and the fact that 23 European countries have become Contracting Parties, including 11 EU member States. Furthermore, the Agreement has led to the annexation of approximately 90 ECE regulations concerning passenger cars, light trucks, heavy trucks, trailers, mopeds and motorcycles, public service vehicles, and other vehicle types. These regulations have been adopted to varying degrees by the Contracting Parties.

The major benefit of the Agreement has been harmonization of safety and environmental regulations relating to new motor vehicles and motor vehicle equipment in Europe. Over the past 36 years, numerous European national motor vehicle regulations have been used as the basis for establishing ECE regulations that have subsequently been adopted by the Contracting Parties pursuant to the Agreement and incorporated into their respective regulatory systems.The reciprocal recognition of type approvals among Contracting Parties applying the regulations has facilitated trade in motor vehicles and equipment throughout Europe. In recent years, the ECE/WP29 forum has been used to harmonize ECE regulations and EU Directives.

The United States is a member of the ECE, and on this basis has been participating as a technical advisor in the work of WP29 and its subsidiary bodies over the past decade. By such participation, the United States has been able to keep itself informed about European motor vehicle safety and environmental regulatory developments. This participation has also encouraged a certain degree of compatibility among the technical standards contained in United States and European motor vehicle safety and environmental regulations. The United States and relevant European countries have fostered such compatibility while adhering to the substantive and procedural requirements of their respective regulatory systems. With respect to vehicle standards in the United States, these requirements include the National Traffic and Motor Vehicle Safety Act, as amended (15 U.S.C. section 1381 *et seq.*), the Clean Air Act, as amended (42 U.S.C. section 7401 *et seq.*), the Noise Control Act, as amended (42 U.S.C. section 4901 *et seq.*), the Motor vehicle Information and Cost Savings Act, as amended (15 U.S.C. section 2001 *et seq.*), and the Administrative Procedure Act, as amended (5 U.S.C. section 551 *et seq.*).

The United States has not, however, become a Contracting Party to the 1958 Agreement because the United States has not wished to incur the Agreement's reciprocal acceptance obligations nor develop its regulations in a common European regulatory development forum. One of the reasons for this position is that the Agreement is premised on the use of a type approval system for the regulation of motor vehicles and equipment. The United States relies generally on a self-certification system to regulate motor vehicle safety and noise, pursuant to statute. Under this system, the manufacturers are responsible for compliance with the applicable standards (subject to verification testing), but need not obtain a certificate of conformity before introducing vehicles into commerce. The United States air emissions regulatory program is based on type approval, since manufacturers must obtain a government certification of conformity to introduce their vehicles into commerce. However, the U.S. air emissions regulatory program is not compatible with the European system because responsibilities and authorities are assigned differently, including responsibility for testing vehicles, interpreting regulations, and issuing certificates of conformity. In addition, the U.S. air emissions program does rely to some extent on manufacturer test data, which is characteristic of a self-certification system.

Conversion of these United States regulatory programs to a European-style system would require additional legislation. Such a change would not necessarily contribute to achieving current statutorily-mandated United States vehicle regulatory goals. Neither the relevant Federal regulatory agencies nor other interested parties have sought this change.

If the United States were currently a Contracting Party to the 1958 Agreement, the U.S. would have to invoke Article 1(6) of the Agreement, which allows a country to become a Contracting Party without adopting the regulations then annexed to the Agreement. This would be necessary because the United States is unable to adopt regulations under this Agreement in the absence of additional conforming legislation that resolves the conflict between the United States self-certification system and the requirement in Article 2 of the Agreement for a type approval system.

Proposed Revision to the 1958 Agreement

Efforts are under way to revise the 1958 Agreement in ways that might make it appropriate for the United States to consider becoming a Contracting Party. The efforts began in 1989, when WP29 issued a mission statement announcing the goal of promoting worldwide harmonization of motor vehicle regulations. Participants in WP29 agreed that serious consideration should be given to revising the Agreement given the many changes that had occurred in the field of motor vehicle regulation since 1958, including the establishment of different vehicle standards programs in various countries around the world (e.g., the United States, Canada, Japan, and Australia), the accelerated rate of change in automotive technology and design, the globalization of the motor vehicle industry and market, and the creation of an integrated market among EU member states.

In 1990, WP29 decided to develop a revised Agreement which would seek to promote worldwide harmonization of motor vehicle regulations and would encourage membership by other countries, particularly the United States, Japan, Canada, and Australia. This latter goal was to be accomplished primarily by revising the Agreement so that type approval would not be mandatory for Contracting Parties.

One of the most significant changes under the proposed revision to the Agreement (the "proposed revision") would be to limit the application of the provisions regarding type approval to those Contracting Parties who choose to promulgate motor vehicle regulations on the basis of a type approval system. Thus, a type approval regulatory system would no longer be a precondition to a country being able to become a Contracting Party and thereby participating in the Agreement. Since a number of non-European countries are members of or participate in activities of the ECE, the possibility of these countries (including the United States) becoming Contracting Parties provides an opportunity to create a forum for promoting compatibility among motor vehicle regulations on a wider scale than currently exists. As Contracting Parties, these non-European countries would gain the right to vote and to propose new regulations as well as changes in existing ones.

Other major changes contained in the proposed revision involve the procedures for annexing a regulation to the Agreement and for amending an annexed regulation. WP29 views the provision in the current Agreement allowing two or more Contracting parties to add a new regulation as an impediment to harmonization because the provision makes it too easy to adopt a regulation that is to be applied by only a small number of Contracting Parties.

Conversely, the current procedures for amending a regulation annexed to the Agreement are considered to be burdensome because any one Contracting Party that has adopted the regulation has the right to veto the proposed amendment. This amendment process may impede the ability of the regulatory development process to respond to technological changes in a timely manner.

The proposed revision would, on the one hand, make it more difficult for a new regulation to be annexed to the Agreement and, on the other hand, make it easier to amend an already-annexed regulation. The proposed revision to the Agreement provides for an Administrative Committee composed of all Contracting Parties. A proposed regulation would be "established" if ⅔ of the Committee members present at a meeting so vote. (At least half of the total number of Contracting Parties would have to be present at such meeting for the vote to be taken.) All Contracting Parties would be notified of the Committee decision. The regulation would be considered adopted as a regulation annexed to the Agreement unless, within 6 months of such notification, at least ⅓ of the Contracting Parties have communicated their disagreement with the regulation. If the requisite number of Contracting Parties did not communicate their disagreement in a timely manner, the annexed regulation would enter into force for all Contracting Parties that did not communicate their disagreement.

The proposed revision also changes the way in which an annexed regulation may be amended. An amendment to an already-annexed regulation would be "established" if ⅔ of the Administrative Committee members from countries applying the regulation present at a meeting so vote. (At least half of the total number of Contracting Parties that have adopted the regulation would have to be present at such meeting for the vote to be taken.) All Contracting Parties that have adopted the regulation would be notified of the Committee decision. The amendment would be considered adopted unless, within 6 months of such notification, at least ⅓ of the Contracting Parties that have adopted the regulation have communicated their disagreement with the amendment. If the requisite number of Contracting Parties did not communicate their disagreement in a timely manner, the amendment would be binding upon those Contracting Parties that have adopted the regulation and have not declared their disagreement with the amendment.

The proposed revision also provides that, if at least 20 percent of the Contracting Parties that have adopted the regulation declare that they wish to continue applying the unamended regulation, the unamended regulation would be regarded as an option to the amended regulation and would be incorporated formally as such in the regulation. Further, the proposed revision allows countries to enforce more stringent standards than those contained in the annexed regulations by either electing not to adopt any particular regulation annexed to the Agreement, or, if the country has in fact adopted a particular regulation and has failed to have the regulation amended, by ceasing to apply the regulation upon one year's notice.

In addition, while the Agreement addresses the regulation of "motor vehicle equipment and parts," the proposed revision to the Agreement provides for the regulation of "wheeled vehicles, equipment and parts." The proposed revision, however, does not recognize other classes of products that are mobile sources of air pollutants, such as off-highway engines.

Possible U.S. Action Concerning the Proposed Revised Agreement

The United States is considering whether it should become a Contracting Party to the proposed revised Agreement. In considering this option, NHTSA and EPA note that the Agreement does not explicitly recognize any regulatory and enforcement system (such as that of the United States) other than a type approval system, notwithstanding a provision of the proposed revision which implicitly gives a Party that adopts a regulation the option of electing not to implement that regulation through a type approval system. NHTSA and EPA believe that if the United States is to consider becoming a Contracting Party to the proposed revision, explicit recognition in the revised Agreement of the United States motor vehicle safety and environmental regulatory/enforcement system is necessary so that regulations promulgated under the United States system would have a status equal to that of the European regulatory/enforcement system under the Agreement. It is unclear under the proposed revision what the relationship and obligations would be among those Contracting Parties that implement regulations through a type approval system and those Contracting Parties that implement the same regulations through other regulatory enforcement systems, such as a self-certification system.

In addition, explicit recognition of non-type approval regulatory enforcement systems in the proposed revision could encourage countries that do not already have a regulatory system that addresses motor vehicle safety and environmental standards to consider adoption of one of those systems. If, as the proposed revision currently stands, only the type approval system is explicitly recognized, countries that currently do not have a regulatory system would be more likely to respond in either of two ways. They would be likely to adopt the type approval system or to develop completely novel systems. If the former occurs, the type approval system could become so widely adopted that there would be increasing pressure on countries using other regulatory/enforcement systems to convert to a type approval system. If the latter occurs, there could be a proliferation of different novel regulatory/enforcement systems.

As with all United States regulations, a regulation under the proposed revision to the Agreement could not be adopted by any Federal agency unless there is domestic legislation to authorize such adoption and the agency follows the rulemaking procedures of the Administrative Procedure Act (APA) and any other applicable statute. Since the APA requires the appropriate Federal agency to solicit and consider public comments in promulgating regulations, the United States cannot agree in advance to adopt a proposed or annexed ECE regulation as a final rule.

Thus, if the United States were to become a Contracting Party to the proposed revision, the United States could not accept a regulation proposed for annexation by other countries unless the regulation is identical to a regulation already adopted by the United States or is proposed and adopted through the United States rulemaking procedures described above. It would therefore vote against "establishment" of the regulation, indicate its disagreement with the annexation of the regulation, or elect not to adopt the regulation in the event of annexation. Further, notwithstanding the fact that the Agreement is being revised to promote compatibility of motor vehicle standards, the United States would not

adopt a regulation that would lower the level of protection provided by current U.S. domestic safety and environmental standards.

Under the revision as proposed, the United States would probably not be able to have its regulations adopted by Contracting Parties and annexed to the Agreement. The United States could not propose a regulation for annexation unless the regulation is identical to a regulation already adopted by the United States. The test procedures in United States regulations are premised partially or wholly on a self-certification system and therefore, unless a self-certification system were explicitly recognized in the proposed revision to the Agreement, a U.S. safety regulation would, in all likelihood, not be accepted by the requisite number of Contracting Parties. This is because the regulation might not be enforceable through a type approval system. However, explicit recognition of other enforcement systems could, for example, allow for different enforcement options within an annexed regulation. For air and noise pollution emissions regulations also, the regulatory systems of the current Contracting Parties are also sufficiently different from the U.S. systems so that the current Contracting Parties would not be likely to accept regulations proposed by the United States for the same reason.

Issued on: March 2, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–5181 Filed 3–3–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC 2; OTS No. 4247]

American Savings, FSB, Muster, IN; Final Action; Approval of Conversion Application

In notice document 94–2510 beginning on page 5479, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5166 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 8; OTS No. 4282]

Bay Ridge Federal Savings Bank, Brooklyn, NY; Final Action; Approval of Conversion Application

In notice document 94–2516 beginning on page 5479, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5167 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–18; OTS No. 02925]

First Federal Savings and Loan Association of Barrington, Barrington, Il; Approval of Conversion Application

Notice is hereby given that on February 23, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Barrington, Barrington, Illinois, convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5165 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–1–M

[AC 11; OTS No. 2639]

First Missouri Federal Savings and Loan Association, Brookfield, MO; Final Action; Approval of Conversion Application

In notice document 94–2519 beginning on page 5479, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5168 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 4; OTS No. 0189]

Great Financial Federal, Louisville, KY; Final Action; Approval of Conversion Application

In notice document 94–2512 beginning on page 5479, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5169 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 1; OTS No. 2013]

Landmark Federal Savings Association, Dodge City, KS; Final Action; Approval of Conversion Application

In notice document 94–2509 beginning on page 5480, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5170 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 3; OTS No. 1145]

Lexington Federal Savings Bank, Lexington, KY; Final Action; Approval of Conversion Application

In notice document 94–2511 beginning on page 5480, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5171 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 10; OTS No. 6149]

Mid-Central Federal Savings Bank, Wadena, MN; Final Action; Approval of Conversion Application

In notice document 94–2518 beginning on page 5480, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5176 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 5; OTS 5 No. 1004]

Mishawaka Federal Savings, Mishawaka, IN; Final Action; Approval of Conversion Application

In notice document 94–2513 beginning on page 5480, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5175 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 9; OTS No. 0214]

Permanent Federal Savings Bank, Evansville, IN; Final Action; Approval of Conversion Application

In notice document 94–2517 beginning on page 5480, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5174 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 7; OTS No. 5201]

Pioneer Savings and Loan Association, F.A., Roslyn, NY; Final Action; Approval of Conversion Application

In notice document 94–2515 beginning on page 5480, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5173 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

[AC 6; OTS No. 3103]

Reliance Federal Savings Bank, Garden City, NY; Final Action; Approval of Conversion Application

In notice document 94–2514 beginning on page 5481, in the issue of Friday, February 4, 1994, correct the document heading to read as set forth above.

Dated: March 2, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–5172 Filed 3–7–94; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Application for Participation in Department of Veterans Affairs Health Professional Scholarship Program and Reserve Member Stipend Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 6, 1994.

SUPPLEMENTARY INFORMATION:

Dated: March 1, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Revision

1. Application for Participation in Department of Veterans Affairs Health Professional Scholarship Program and Reserve Member Stipend Program.

a. VA Form 10–0003, Health Professional Scholarship Program Application for Award.

b. VA Form 10–0003a, Health Professional Scholarship Program Academic Verification.

c. VA Form 10–0003b, Health Professional Scholarship Program Contract.

d. VA Form 10–0003c, Reserve Member Stipend Program Application for Award.

e. VA Form 10–0003d, Reserve Member Stipend Program Academic Verification.

f. VA Form 10–0003e, Reserve Member Stipend Program Contract.

g. VA Form 10–0003f, Recommendation of Reserve Unit Commanding Officer.

2. The information collected on these forms is used to determine eligibility/suitability of student applicants desiring to receive an award offered through the Department of Veterans Affairs Health Professional Scholarship Program.

3. Individuals or households.

4. 6,000 hours.

5. 2 hours.

a. VA Form 10–0003—1½ hours.

b. VA Form 10–0003a—15 minutes.

c. VA Form 10–0003b—10 minutes.

d. VA Form 10–0003c—1½ hours.

e. VA Form 10–0003d—15 minutes

f. VA Form 10–0003e—10 minutes.

g. VA Form 10–0003f—30 minutes.

6. Annually.

7. 3,000 respondents.

[FR Doc. 94–5179 Filed 3–7–94; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: 38 CFR 21.7653(d)—Reservists Education; The Veterans Education and Employment Amendments of 1989, the Department of Defense Authorization Act, 1990, and the Montgomery GI Bill—Selected Reserve

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C.

Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 7, 1994.

Dated: March 1, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

New Collection

1. 38 CFR 21.7653(d)—Reservists Education; The Veterans Education and Employment Amendments of 1989, the Department of Defense Authorization Act, 1990, and the Montgomery GI Bill—Selected Reserve.

2. The proposed amended regulation, 38 CFR 21.7653(d), requires educational institutions to report when they have terminated the enrollment of reservists due to unsatisfactory conduct, progress or attendance. The information will be used to determine when to terminate benefits to these reservists.

3. Businesses or other for-profit—Non-profit institutions—Small businesses or organizations.

4. 517 hours.

5. 5 minutes.

6. On occasion.

7. 6,215 respondents.

[FR Doc. 94–5177 Filed 3–7–94; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: 38 CFR 21.7654—Reservists Education; The Veterans Education and Employment Amendments of 1989, the Department of Defense Authorization Act, 1990, and the Montgomery GI Bill—Selected Reserve

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 6, 1994.

Dated: March 1, 1994.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

New Collection

1. 38 CFR 21.7654—Reservists Education; The Veterans Education and Employment Amendments of 1989, the Department of Defense Authorization Act, 1990, and the Montgomery GI Bill—Selected Reserve.

2. The proposed amended regulation, 38 CFR 21.7654, requires reservists training under the Montgomery GI Bill to verify their enrollment each month. The information will be used to determine the proper monthly payments to be made to these students.

3. Individuals or households.

4. 67,258 hours.

5. 5 minutes.

6. On occasion.

7. 115,300 respondents.

[FR Doc. 94–5178 Filed 3–7–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59 No. 45
Tuesday, March 8, 1994

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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 10, 1994, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A Approval of Minutes

B New Business

1 Regulations

a. Debt Collection [Collection of Claims Owed the United States; 12 CFR Part 608] (Final)

Closed Session *

A. Reports

1. OSMO Quarterly Report

B. New Business

1. Enforcement Actions

Dated: March 4, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–5457 Filed 3–4–94; 3:10 pm]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board) concerning the Farm Credit System Building Association.

DATE AND TIME: The special meeting of the Board concerning the Farm Credit System Building Association will be held March 10, 1994 at the offices of the Farm Credit Administration in McLean, Virginia, immediately following the FCA Board's regular meeting at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public. The matter to be considered at the meeting is:

Open Session

A. Reports

1 FCSBA Quarterly Report

Dated: March 4, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–5458 Filed 3–4–94; 3:08 pm]

BILLING CODE 6705–01–P

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(8), (9) and (10).

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, March 15, 1994

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 32248, *Hanson Natural Resources Co.—Non-Common Carrier Status—Petition for a Declaratory Order*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Public Affairs, Telephone: (202) 927–5350; TDD (202) 927–5721.

Dated: March 4, 1994.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–5233 Filed 3–3–94; 12:24 pm]

BILLING CODE 7035–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, March 15, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6298—Aircraft Accident Summary Report: Continental Express, EMB–120, N24706, Pine Bluff, Arkansas, April 29, 1993.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: March 4, 1994.

Bea Hardesty,

Federal Register Liaison Officer

[FR Doc. 94–5420 Filed 3–4–94, 1.25 pm]

BILLING CODE 7533–01–M

federal register

Tuesday
March 8, 1994

Part II

Department of Agriculture

Forest Service

36 CFR Part 254
Land Exchanges; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

RIN 0596–AA42

Land Exchanges

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the requirements that are applicable to the land exchange activities of the Forest Service. The principal provisions of the rule pertain to exchange agreements, assembled land exchanges, segregation, compensation for costs assumed, appraisal standards, bargaining, arbitration, approximately equal value exchanges, value equalization, cash equalization waiver, and simultaneous transfer of title. The intended effect is to fully implement the authorities granted by the Federal Land Exchange Facilitation Act of August 20, 1988.

EFFECTIVE DATE: This rule is effective April 7, 1994.

FOR FURTHER INFORMATION CONTACT: James M. Dear, Lands Specialist, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1361.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1991, the Forest Service and the Bureau of Land Management published separate proposed rules (56 FR 49948–49977) for implementing the amendments to section 206 of the Federal Land Policy and Management Act of 1976, made by the Federal Land Exchange Facilitation Act of August 20, 1988 (43 U.S.C. 1716).

The purpose of the Act is to facilitate and expedite land exchanges under the authority of the Secretary of Agriculture and the Secretary of the Interior by streamlining and improving the procedures for such exchanges. The Act endorses the long-standing policy that land exchange is an important tool to consolidate landownership for purposes of more efficient management; to secure important objectives of resource management, enhancement, development, and protection; and to fulfill other public needs. The Act requires each Secretary to promulgate rules for exchanges of land.

The proposed rules also incorporated other authorities and procedural requirements applicable to each agency. Included in the rules were provisions to streamline and expedite exchanges involving Federal and non-Federal lands such as exchange agreements, assembled land exchanges, segregation, compensation for costs assumed, appraisal standards, bargaining, arbitration, approximately equal value exchanges, value equalization, cash equalization waiver, and simultaneous transfer of title. A 60-day public comment period was provided.

Summary of Public Comments Received and Agency Response to Comments

The Forest Service and BLM received comments from 58 sources including: 6 individuals, 18 business and industrial entities, 2 civic organizations, 2 environmental organizations, 2 professional societies, and 28 Federal, State, and local government entities.

All comments received on the rules were shared and jointly analyzed by the Forest Service and BLM. The analysis of comments pertaining to the Forest Service rule, and the corresponding responses and changes are discussed as follows. Editorial and grammatical corrections also have been made as necessary

General Comments

Comment. Two respondents stated that the timeframes in the rule are too lengthy, particularly those related to the initiation and review process.

Response. The time periods specified in various sections of the rule were either imposed by the Federal Land Exchange Facilitation Act or are administratively necessary to comply with the Forest Service's public participation and environmental analysis procedures. However, the Forest Service and BLM have made further adjustments in their scheduling requirements in order to develop more uniform final regulations and to reduce the time periods wherever possible.

Comment. One respondent felt that streamlining the process to expedite exchanges may promote rapid disposal of Federal holdings in urban areas and forego revenue-making opportunities on those properties. It was further suggested that a process for mid-course review, at the highest departmental levels, should be built into the regulations.

Response. The land management agencies generally do not administer lands for intense development in urban areas. Moreover, each exchange opportunity must be analyzed on an individual basis. Certain high value or complex exchanges may involve Secretarial review, but to require a mid-course review of all exchanges would create unnecessary delay and inefficiency. Therefore, this suggestion was not adopted.

Comment. It was pointed out by one reviewer that there is no provision in the rule for conducting public hearings.

Response. In conjunction with the written notification requirements in §§ 254.8 and 254.13 of the final rule, the authorized officer may hold public hearings or public meetings whenever appropriate to solicit information from the public. The need to conduct hearings or meetings will vary depending on the level of interest and potential controversy associated with a land exchange. Therefore, a separate provision to cover public hearings or meetings is considered unnecessary.

Comment. One respondent suggested that the rule require the preparation of an "environmental values document" to compare relative ecological values to be exchanged.

Response. All resource values associated with the lands involved in an exchange are examined through an environmental analysis completed pursuant to Council on Environmental Quality regulations at 40 CFR parts 1500–1508 and Forest Service directives (FSM 1950; FSH 1909.15). Therefore, a separate "environmental values" document is not required.

Specific Comments

Section 254.1—Scope and applicability. One respondent suggested that paragraph (b) of this section of the proposed rule should give a specific citation to the Small Tracts Act regulations. This suggestion has been adopted in the final rule.

Two parties commented on paragraph (c) of this section of the proposed rule, which would permit application of the rule to land exchanges in Alaska to the extent the regulations did not conflict with the Alaska Native Claims Settlement Act or the Alaska National Interest Lands Conservation Act. One suggested separate regulations for such exchanges, similar to the Small Tracts Act situation. The other felt the rule should allow the authorized officer to depart from this rule to the degree consistent with the Alaska National Interest Lands Conservation Act. These suggestions have not been adopted. Paragraph (c) provides the authorized officer the latitude allowed by law to pursue land exchanges in Alaska and is unchanged from the language of the proposed rule.

Three comments were received on paragraph (d) of this section of the proposed rule. One respondent recommended that, in the name of uniformity, once the final rule is adopted all exchanges should be subject to the new regulations. Another suggested changing the provision

related to proceeding with exchanges under prior agreements from "may" to "shall". The third asked for clarification on the handling of exchanges begun prior to this rule. In response, the rule has been revised to clearly state that, unless the parties agree otherwise, any written agreement based on prior regulations shall continue in accordance with that procedure.

Paragraph (e) of the proposed rule provided that the boundary of the national forest be automatically extended to encompass lands acquired under the Weeks Act of March 1, 1911, as amended. There were two suggested changes to paragraph (e). One response recommended adding the clause "upon acceptance of title by the authorized officer," as a condition upon the automatic extension of the boundary. The other questioned both the apparent limitation and expansion of Weeks Act authority that the current wording suggests. Both recommended removing the words "by exchange" and made an observation that the Weeks Act refers only to acquired lands within the exterior boundaries of national forests. The recommendation to delete the words "by exchange" was adopted. However, the reference to acceptance of title by the authorized officer would be inconsistent with § 254.16 of the rule and, therefore, was not adopted.

Section 254.2—Definitions. Two respondents suggested that the term "eminent domain" not be used in the definition of "acquisition" because of the negative implication associated with condemnation and the erosion of private property rights. This suggestion was not adopted, because this is the standard definition used by the Forest Service to explain the various methods available to the Secretary of Agriculture to acquire land on behalf of the United States. It should be noted that § 254.3(a) of the rule states that land exchanges are discretionary, voluntary real estate transactions between the Federal and non-Federal parties. Moreover, the Forest Service typically acquires land through exchange, purchase, or donation. Condemnation is rare and is considered as a last resort for acquisition.

One respondent recommended that language be added at the end of the definition of "agreement to initiate" to clarify that the signing of such an agreement is not required for preliminary discussions between the parties to assess the feasibility of an exchange. This revision was not considered necessary or appropriate to a definition, as § 254.4(a) and (b) of the final rule allow the parties to assess the feasibility of an exchange proposal before entering into an agreement to initiate.

It was recommended that the definition of "approximately equal value" be replaced with the definition of that term as used in the Small Tracts Act regulations at 36 CFR 254.31. This recommendation was adopted.

One reviewer recommended that the definition of "bargaining" include other issues such as minerals, access, reservations, etc. This suggestion was not adopted, because § 254.10(a) of the rule states that bargaining shall be based upon an objective analysis of the valuation in the appraisal report(s), which takes into account all factors which might influence the value of the estate to be conveyed.

One respondent stated that the definition of "highest and best use" in the proposed rule might be too broad and recommended that the phrase "and present uses of adjacent property" be added after the words "based on market evidence". The definition in the proposed rule is that used throughout the appraisal profession. The uses of nearby properties are always considered by the appraiser in determining highest and best use, but limiting consideration to adjacent properties could result in inaccurate estimates of value. Therefore, this suggestion was not adopted.

It was suggested that the definition of "market value" include mineral and timber interests, archaeological sites, and cultural resources. This revision is not necessary. Market value is applicable to property as though it were in private ownership and anything that may affect value is considered by the appraiser.

One respondent asked if the mineral leasing laws referred to in the definition of "mineral laws" include mineral resources on Weeks Act lands. In response, the definition has been revised to make clear that the mineral laws apply only to those lands reserved from the public domain for National Forest purposes.

It also was recommended that the definition of "party" be revised to recognize States as full parties to an exchange. This change is not necessary. The definition in the proposed rule clearly recognized the States as being eligible to enter into an agreement to initiate an exchange and is adopted without change in the final rule.

One respondent recommended that the definition of "segregation" be amended to clarify that Federal lands may be segregated from operation of the public land laws "and/or" mineral laws and further suggested adding the phrase "or by operation of law" after the word Secretary. This recommendation was not adopted. The purpose of segregation is to avoid the appropriation of long-term encumbrance of Federal lands being considered for conveyance in an exchange. The intent is to segregate from entry under both the public land laws and the mineral laws, and the term has long been interpreted to cover both types of entry. The term "by operation of law" would add nothing because this authority already lies with the Secretary.

Another reviewer indicated that the definition of "statement of value" did not appear to conform to the Uniform Standards of Professional Appraisal Practice and could place appraisers at risk in violating their professional standards if they produced a statement of value rather than a full appraisal report. The Department disagrees. The regulations only require the qualified appraiser to determine if the Federal lands exceed $150,000. Although a full appraisal report is not needed, the appraisal analysis must meet the minimum standards contained in the Uniform Standards.

One reviewer suggested adding definitions for "resource values" and "management objectives" in order to clarify the determination of public interest that must be made under § 254.3(b). The Department agrees that a definition of "resource values" would be helpful and has included the term in the definition section. However, a definition of "management objectives" was not included, as the generic term is of widespread common usage.

It also was suggested that the term "presence of environmental values" be defined in the rule and that the definition address cultural resource values and the associated costs of survey, mitigation, tests, excavations, etc. to ensure that such values are not overlooked in the determination of public interest, agreement to initiate an exchange, and assumption of costs. This suggestion was not adopted. Section 254.3(b) of the rule mentions cultural resources as one of several factors to be considered in the determination of public interest, and § 254.7 of the rule allows for compensation for costs associated with cultural resource surveys and mitigation. Additionally, § 254.3(g) requires that an environmental analysis be prepared. This analysis ensures that environmental values such as cultural resources are not overlooked in the determination of public interest.

Section 254.3—Requirements.

(a) *Discretionary nature of exchanges.* One respondent recommended that this paragraph be amended to clarify that the discretionary authority of the Secretary

in determining public and State interests is subject to public review. This suggestion was not adopted, as § 254.3(b) of the rule requires consideration of the needs of State and local residents, and § 254.13 of the rule sets forth the requirements for public notice of decisions and subsequent review. Therefore, paragraph (a) is adopted without change from the proposed rule.

(b) *Determination of public interest.* Extensive comments were received on this paragraph. One respondent suggested that protection of watersheds be added as a factor in the determination of public interest. This suggestion has been adopted.

Proposed paragraph (b) provided that the authorized officer may complete an exchange only after a determination that the public interest will be well served. It was suggested that the term "best served" be used, instead of "well served". However, the term "well served" is retained in the final rule, because it is the term used in section 206(a) of the Federal Land Policy and Management Act of 1976.

The same respondent pointed out that there was nothing in the regulations on what type of lands would be acquired and suggested the rule include a list of lands would be acquired and suggested the rule include a list of lands most desirable. It would be impracticable to list in these regulations all the types of lands that would be acquired through exchange, due to the variety of resources on involved lands and the variety of objectives and circumstances that lead to initiation of exchange proceedings. Identification of types of lands suitable for exchange is more appropriate during the land and resource management planning process.

One respondent stated that use of the phrase "accommodation of land use authorizations" as one of the factors to be considered in a public interest determination was ambiguous and suggested wording to ensure that right-of-way corridors for energy transportation and utility purposes are considered in the determination of public interest. This suggestion was adopted by expanding on the term "authorized uses" in § 254.4(c)(4) of the rule to include grants, permits, easements, or leases and by providing a cross reference to this provision in § 254.3(b).

One respondent recommended that paragraph (b) emphasize the management and development of private lands as a factor to consider in determining public interest and suggested working for inclusion into the final rule. Additionally, two respondents recommended that this paragraph include an analysis of a State's economic needs and that the rationale and decision of the authorized officer be included in the public record. They specifically requested that additional regulatory requirements be imposed to provide an analysis of coal development, the feasibility of future leasing, and any possibility of royalty losses and the attendant impacts to States. In response to these comments, paragraph (b) has been revised in the final rule to include consideration of the opportunity "* * * to meet the needs of State and local residents and their economies * * *," thus emphasizing the importance of these criteria in the determination of public interest. Additionally, it should be noted that the "Notice of Exchange Proposal" at § 254.8 of the rule allows the public to participate early in the exchange process and to identify any issues or concerns they may have regarding an exchange proposal. This could include issues such as mineral resource development potential on the involved Federal lands, the potential loss of royalties, and the related impacts to State and local economies. The information received in response to the notice of exchange proposal would be considered in the development of an environmental analysis. The environmental analysis and related studies would serve as the basis for the "Notice of Decision" at § 254.13 of the rule, and this decision and all supporting documents would be included in the public record.

Another respondent suggested adding coal as a specific value to be considered. This is not necessary, since coal is included within the reference to mineral values throughout the rule.

A local government suggested that an exchange should not be approved if it may adversely affect recreation, open space preservation, habitat, air quality, or other resources. No change was made in the final rule to accommodate this suggestion, since all potential impacts must be considered in the environmental analysis pursuant to paragraph (g) of this section, and a decision to proceed with an exchange must consider any adverse impacts identified in the analysis.

A State government wrote that the Regional Coal Team should be provided the opportunity for full participation in reviewing any exchange proposal. The Department agrees. Notice and review procedures are set out in § 254.8 of the final rule. When processing exchanges involving coal, the appropriate Regional Coal Team will have an opportunity to review the exchange; however, it is impracticable to list in § 254.8 all the appropriate entities that should be given review opportunities.

One respondent suggested that the provision of the proposed rule that the intended use of conveyed Federal land not be in conflict with management objectives of adjacent Indian Trust lands be deleted or limited to those uses of conveyed Federal lands that conflict with management objectives of 'adjoining" Indian Trust lands that were established formally prior to the exchange proposal. This suggestion has been partially adopted by making clear that the intended use of conveyed Federal land will not "substantially conflict with established" management objectives (§ 254.3(b)(2)(ii) of the final rule).

The local government respondent also suggested that as a condition of exchange, the Federal lands that may be used for landfills which may affect air quality must use LAER (lowest achievable emission rates) technology, not the less stringent BDT (best demonstrated technology). The environmental analysis conducted pursuant to paragraph (g) of this section of the rule should consider all potential impacts and measures their effects by whatever standards are appropriate. Rather then defining specific technologies in this rule, the appropriate method of analysis of air quality and other considerations will be identified as proposals are developed. Public input will be considered in selecting assessment methods. Therefore, the suggestion has not been adopted in the final rule.

In order to consider the objective of meeting the needs of State and local residents, one respondent suggested that this paragraph be revised to require that an exchange be consistent with the zoning and the land use element of the general plan for adjacent non-Federal lands and include a land use consistency determination by each local agency with land use (planning and zoning) authority over adjacent lands. The authority of State and local governing bodies to regulate and zone non-Federal land, including land that has been conveyed from Federal ownership, is recognized in paragraph (h) of this section of the rule. Since those bodies would have jurisdiction over lands conveyed to non-Federal ownership, it would be meaningless to include in the rule that the use of the conveyed lands must be consistent with local zoning.

Five respondents felt that the proposed requirement that the land exchanged into non-Federal ownership must be used or managed to conform to

or enhance adjacent Federal lands uses was costly, inequitable, unfair, or could otherwise limit exchange opportunities. However, this paragraph of the proposed rule simply required the authorized officer to consider the intended uses as part of the public interest determination. The language of paragraph (b)(2) of this section of the proposed rule did not imply control over future uses or place any requirement on the management of the land after conveyance to the non-Federal party, unless specific reservations, covenants, or restrictions are included in the deed or patent pursuant to paragraph (h) of this section of the final rule. It would not be in the public interest to convey Federal lands if the intended uses were to create substantial management conflicts on adjacent Federal lands; therefore, this provision is retained in the final rule as one of the findings the authorized officer must be able to make in order to determine that the public interest is well served by the exchange.

One respondent felt that the two-part finding of public interest must be broad enough to encompass all management objectives contemplated and that emphasis should not be placed on non-commodity resources. Paragraph (b) of this section of the rule is sufficiently broad to include all involved resource values and all identified management objectives. Further, a definition of "resource values" has been added to § 254.2 of the final rule. That definition includes both commodity and non-commodity values, surface and subsurface.

It was requested that the reference to cultural resources be strengthened in the final regulations. In response, cultural resources is now specified as a resource to consider in reaching a public interest determination.

Another party wanted "promotion of multiple-use values" changed to "continuation of multiple-use values". The language of the proposed rule has been retained, because it is the language used in section 2(a)(1) of the Federal Land Exchange Facilitation Act of 1988 in which Congress finds that land exchange is an important tool for "the promotion of multiple-use values".

One respondent felt that the regulation "guts" the entire public interest test set forth in the Federal Land Policy and Management Act of 1976, by mandating that regardless of the Secretary's determination of public interest, an exchange must not occur if the specified conditions are not met. That respondent recommended deletion of this section. The Department disagrees. Section 206(a) of the Federal Land Policy and Management Act of 1976 provides a listing of considerations to be included in any public interest determination. That listing includes "better Federal land management and the needs of state and local people." In addition to the substantive changes made in response to comments received, paragraph (b) of the final rule has been subdivided into paragraphs (b)(1)–(b)(3) for ease of use and reference.

(c) *Equal Value Exchanges.* One respondent recommended that this paragraph of the rule be amended by adding "Equal value can include the use of a public interest finding as authorized by specific statutes such as the Alaska National Interest Lands Conservation Act." This recommendation cannot be adopted. Section 206(b) of the Federal Land Policy and Management Act of 1976 requires equal value exchanges on a monetary basis. The elements of a public interest finding may be considered in the valuation of a property, only to the degree that those elements are reflected in the real estate market.

Finally, it was suggested that a cross reference to the provisions for approximately equal value exchanges in § 254.11 of the rule be included in this paragraph. This suggestion was adopted.

(d) *Some State exchanges.* Four respondents recommended that this paragraph of the rule be amended to allow for interstate exchanges. This suggestion cannot be adopted, because section 206(b) of the Federal Land Policy and Management Act of 1976 requires that the Federal and non-Federal lands involved in an exchange must be located in the same State.

(e) *Congressional designations.* It was suggested that in the phrase "upon acceptance of title by the United States," the words "United States" be replaced with "authorized officer." This change would not be legally correct, since title may be accepted in the name of the United States by means other than formal acceptance by an authorized officer. (See § 254.16(a) of the final rule.)

(f) *Land and resource management planning.* Several reviewers felt the proposed rule limited the consideration of exchange proposals to those consistent with existing agency land management plans. No change in the rule is necessary to be responsive to this concern. Agency land and resource management plans can be amended to recognize new information or changes in conditions.

Another respondent felt that the regulations should not require that land use plans specifically authorize exchange of Federal land in question, stating that the land use plan could not foresee all exchange proposals. The proposed rule did not require that a land and resource management plan specifically authorize an exchange—only that an exchange proposal be consistent with the goals and objectives of the plan. This criterion is a requirement of the National Forest Management Act and agency policy, and, therefore, is retained in the final rule.

Concern was also expressed that there was nothing in the regulations on identifying non-Federal lands for exchange; this respondent called for involving the private landowner from the beginning. This suggestion was not incorporated in the final rule, because land and resource management plans identify areas or specific tracts of non-Federal lands which the agency is interested in acquiring to effect consolidation. Private landowners have the opportunity to provide input in the planning process to help identify long-range goals and opportunities to pursue land exchanges. Since exchanges are voluntary, both the non-Federal landowner and the United States must agree to the exchange.

Sometimes BLM lands are identified as needed to complete a land exchange involving non-Federal lands which would be suitable for National Forest System purposes. One respondent suggested that BLM lands suitable for such exchanges be identified in the BLM planning process. No change was made in the rule to respond to this question. Land and resource management plans for National Forest System lands do not identify BLM lands to be used in exchanges. Such exchanges occur only after negotiation between the non-Federal party and the agencies and must be consistent with BLM land use plans. The public interest determination will be made by BLM using the criteria specified in 43 CFR 2200.0–6(b).

(g) *Environmental analysis.* One respondent pointed out that this paragraph of the proposed rule suggested that the public is not invited to submit comments on the environmental consequences of the proposed land exchange. The Council on Environmental Quality regulations and Forest Service environmental analysis policy and procedure already address public notice and comment on environmental documents; therefore, it is not necessary to repeat these opportunities in this rule. In addition, § 254.8 of the rule provides for public notice of the proposed exchange, with an opportunity for the public to submit timely comments which shall be

considered in the environmental analysis of the proposed exchange.

Finally, a concern was expressed that compliance with section 106 of the National Historic Preservation Act is not mentioned. It would be impracticable to list in this paragraph all the statutory and regulatory requirements that must be considered in an environmental analysis. Cultural resources is only one of the many significant resources which must be considered. This rule does not limit or exclude any resources from consideration.

(h) *Reservations or restrictions in the public interest.* Several respondents questioned the authority and need to use reservations or restrictions in the conveyance of Federal land. Two comments regarding authority focused on perceived conflicts between the Federal Land Exchange Facilitation Act and the Federal Land Policy and Management Act of 1976. One comment suggested that reservations or restrictions are not needed if the exchange is in the public interest. Another comment suggested conveying partial interests to third parties, in lieu of reservations or restrictions. Two respondents were concerned with the burden placed on the Federal and non-Federal parties by reservations or restrictions. One respondent suggested that the first sentence be deleted, since covenants create continuing administrative burdens for agencies and invite reciprocal restrictions.

Section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA) and other statutory authorities provide for the use of reservations or restrictions, and the Department is unaware of any conflicts between FLPMA and the Land Exchange Facilitation Act. Identification of a need for reservations or restrictions begins with an agreement to initiate an exchange. Subsequent analysis will determine if the exchange is in the public interest, and if so, confirm whether reservations or restrictions are needed. The final rule allows alternative methods to protect resources other than reservations or restrictions, such as third party participation. Although reservations or restrictions may place burdens on both the Federal and non-Federal parties, the effects of reservations or restrictions would be considered by each party prior to a decision to proceed.

A major utility company representative expressed the thought that the United States could retain title to, or administration of, lands involved in an exchange that are subject to rights-of-way. This is correct, the authority to reserve and retain any rights and interests, including rights-of-way permits, easements, or grants, when it is in the public interest, is provided in paragraph (h) of this section of the final rule.

It was suggested that any covenants be developed in consultation with appropriate Federal and State agencies including the State Historic Preservation Officer. Covenants and restrictions may be developed to protect any Federal interests, including cultural resources, and consultation with appropriate Federal and State agencies occurs as a matter of course. Therefore, the final rule does not incorporate explicit language on consultation with State Historic Preservation Officers.

One respondent stated that the Federal Land Policy and Management Act of 1976 exempts land exchange patents from including terms, covenants, or conditions. This is not correct. Section 206 of the Federal Land Policy and Management Act of 1976 supplements other existing Forest Service land exchange authorities and specifically provides authority to exchange an interest in land of less than fee estate. The authority to convey less than fee estate confers authority to accept terms and impose covenants, conditions, and reservations as determined by the Secretary as needed to protect the public interest.

Three respondents suggested the United States retain a mineral royalty when exchanging Federal land. There is no statutory authority requiring the reservation of a royalty interest.

One comment suggested that if Federal property has public interests so critical that they should be retained then the lands should not be exchanged. That is certainly a true statement and is the basis for turning down many proposals for land exchanges. However, in some cases both parties may be willing to accept reservations or covenants to protect critical interests, in order to make tenable an exchange that would otherwise be untenable.

(i) *Hazardous substances.* One respondent suggested that the agencies require "hold harmless agreements" when conveying Federal lands affected by hazardous substances to a "potentially responsible party." While "hold harmless agreements" are desirable, it is necessary to maintain the option for providing "hold harmless agreements" in negotiating land exchanges of critical public importance, in order to avoid discouraging non-Federal parties who are unable to assume such liability.

One respondent pointed out a perceived inconsistency in the requirements for notification for private parties and the Federal government. The notice to the private party requires that "known" storage, release, or disposal of hazardous substances be addressed, whereas, the private party must notify the government of "known or suspected * * *" The respondent favored the broader application but suggested that, in any case, they should be consistent. The Department agrees. The rule has been revised to require both parties to give notice of only "known" storage, release, or disposal, in accordance with the minimum standard of the Environmental Protection Agency regulations at 40 CFR Part 373.

The same respondent pointed out that the proposed regulations would require the Federal officer to determine whether hazardous substances are present on non-Federal lands but would not require such on Federal lands and recommended that the provisions be made consistent. This suggestion has been adopted. Paragraph (h)(1) of the final rule also requires the authorized officer to determine whether hazardous substances are present on the Federal lands.

Several respondents proposed that the private parties only be required to provide a broad "hold harmless" indemnification if the government will reciprocate. This suggestion cannot be adopted. Under 42 U.S.C. 9620, the United States is required not only to clean up any hazardous substances found on the Federal lands prior to conveyance, but also to warrant in the conveyance document to other than a "potentially responsible party" that the United States will be responsible for any further cleanup necessary.

Another respondent stated that a "hold harmless agreement" may not protect Federal interests from cleanup liability imposed by a third party. This comment is correct. A "hold harmless agreement" would not relieve the United States of any appropriate liability; however, it would provide a mechanism for compensating the United States for cleanup costs and claims after conveyance.

It was suggested that the regulations state that the government is acquiring lands as an "innocent purchaser." This suggestion was not adopted as it is doubtful that such a disclaimer in the rule would, in fact, establish the United States as an "innocent purchaser" in every case. In many cases, courts recognize that the owner of the property shares in whatever liability may exist.

Two comments indicated the regulations failed to take into account a recent court ruling (*Hercules, Inc.* v. *U.S. EPA*, 938 F.2d 276, DC Cir. 1991) that the United States is responsible for

hazardous substances on Federal land regardless of ownership at the time the substances were present, and suggested the phrase "* * * during time of Federal ownership * * *" be deleted. This suggestion was adopted and the phrase was deleted in the final rule.

Another reviewer mentioned that 42 U.S.C. 9620 requires the conveyance document to contain a notice of hazardous substances on the Federal lands to be conveyed. The first sentence of paragraph (i)(1) of § 254.3 was modified to include reference to this requirement.

It should be noted that the Community Environmental Response Facilitation Act (106 Stat. 2174) was signed into law on October 19, 1992, about one year after the proposed land exchange rules were published in the Federal Register. The procedural requirements of this statute, which amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(4)), will be followed to the extent applicable to land exchanges, and the agencies will consider whether there is a need for future rulemaking in connection with this new law.

(j) *Legal description of properties.* One respondent said that property description by legal survey is sometimes difficult and suggested that the rule be amended to provide for use of a map as an alternative. This suggestion cannot be adopted. Department of Justice standards and Public Land Survey System laws do not permit use of a map reference as a legal description of lands.

Coordination with State and local governments. It was suggested that the Forest Service add a paragraph on Coordination with State and Local Governments similar to that included in the BLM proposed rule. In response, the final rule was amended at § 254.8(a) to specifically provide for notifying State and local governments of proposed exchanges. In addition, § 254.13(a)(2) of the final rule also provides for Forest Service notice to State and local governments when a decision is made to proceed with an exchange.

Two respondents expressed concern that local government plans and land use ordinances be noted and respected in the exchange process. One suggested including a provision to require a consistency review by the State government. Paragraph (h) of this section of the rule states that the lands conveyed out of Federal ownership shall be subject to local government laws, regulations, and zoning, and § 254.8 provides for notification of State and local governments. These provisions afford State and local governments full opportunity to conduct whatever reviews they feel are needed, including consideration of land uses and zoning, in commenting on a proposed exchange. Therefore, no additional reference to local plans and ordinances was felt to be needed in this final rule.

Section 254.4—Agreement to initiate an exchange. A representative of an environmental group suggested a provision requiring full public input and, also, specifying that the National Environmental Policy Act (NEPA) process must begin as soon as the agreement is executed. The opportunity for public input will occur in accordance with the public notice and comments provisions of § 254.8 of the rule. Additional public input opportunities will be dependent upon the level of NEPA analysis and documentation, which, in turn, is dependent upon the complexity of each exchange proposal. Generally, the NEPA process is begun soon after an agreement to initiate is executed.

Another respondent suggested that the agreement to initiate should additionally detail who would be responsible for costs incurred to date in the event the exchange process is terminated prior to execution of an exchange agreement (or an exchange of titles). Such a requirement would be in direct conflict with paragraph (f) of this section and § 254.14(d) of the rule, which provide that there are no obligations or reimbursement requirements in exchanges which are terminated short of a binding exchange agreement.

One respondent questioned if a non-Federal party were to propose exchanging non-Federal lands within the boundaries of the National Forest System for public lands under the jurisdiction of BLM, would that party be required to indicate as a part of the proposal document that the offered land is covered by a Forest Plan showing the land is essential to the programs of the National Forest Sytem? No; the non-Federal party would have no responsibility to determine whether the acquisition of the non-Federal land is consistent with the land and resource management plan. This would be a Federal responsibility.

Another respondent suggested adding language requiring the authorized officer to meet with the non-Federal party and discuss proposed exchanges to the extent necessary prior to determining whether an agreement to initiate an exchange should be executed. The Department does not believe the rule needs to be burdened with such a requirement. Such advance meetings and discussions are commonplace and necessary to reach the point of entering an agreement to initiate. However, a meeting is not always needed, especially where a proposal is clearly infeasible or without merit.

One respondent suggested language requiring the prospective parties to agree to a preliminary estimate of value prepared by a qualified appraiser if the property to be conveyed out of Federal ownership exceeds $150,000 in value. The preliminary estimate of value is a tool available to the parties to evaluate the feasibility of an exchange proposal. However, its use should remain discretionary, due to the added cost and to the fact that such an estimate by an appraiser is not always needed to estimate relative values of properties to be exchanged.

One comment suggested that the preliminary estimate of value should reflect the intended use of the lands, thus eliminating the potential for unwarranted, substantial ("windfall") profits by the non-Federal landowner. This suggestion was not adopted. The appraisal process cannot be used to identify windfall profits. However, in preparing any estimate of value, an appraiser must take into consideration all probable uses of the property, including the proposed or intended use. Appraisal standards require that these uses be legal, economically feasible, and physically possible and that appraisals reflect the highest and best use (i.e., the most profitable use) of the property. The intended use may not always be the highest and best use of the property, the value of which, nevertheless, must be considered in arriving at the estimated land values. To disregard an important element of information that may influence market value would be improper.

A number of comments were received on the listed requirements for an agreement to initiate an exchange. One respondent suggested that a form be developed listing the information needs for a Federal land exchange to help determine whether an exchange is feasible. This suggestion was not adopted. A standard form listing all the information necessary to determine the feasibility of a Federal land exchange is impracticable because the information required depends upon the particular situation.

Another respondent was of the opinion that identification of the non-Federal lands should not be mandatory in the agreement to initiate, since the environmental review process could result in changes of included lands. While amendment of the involved lands

may occur at any time during the process, identification of all lands which might be included in the final transaction of the exchange is necessary in the agreement to initiate, as that document is the source of the descriptions in the public notice of the proposal. Therefore, this recommendation was not adopted in the final rule.

Several additions to the current list of requirements were suggested. These included: a citation of the exchange authority; a statement regarding the need for segregation of the Federal lands once the exchange is started; and identification of the status which the acquired lands would assume following title acceptance by the United States and termination of the 90-day segregation period. It was also suggested that the appropriate U.S. officer having jurisdiction over title records for lands and minerals review these items. Such considerations, while essential to completion of an exchange, are generally not elements of the exchange upon which agreement must be reached, rather, they are administrative processes and considerations that occur in analyzing a proposed exchange. Therefore, this suggestion is not included in the final rule.

Two respondents suggested revisions to the requirements for identification of the parties involved in the exchange. One respondent suggested a full disclosure of any holding companies, officers, directors, holders of significant blocks of stock, campaign contributions made to holders of Federal office, and any agreements made for subsequent sale or exchange of lands to be acquired from the Federal government. This suggestion cannot be adopted.

One industry representative had dual concerns that all known uses be identified in the "agreement to initiate" and that right-of-way grants be specifically identified as an authorized use. Paragraph (c) of § 254.4 was amended to adopt this recommendation, in order to assure that all affected parties can be considered and notified.

Another industry respondent pointed out that proposed § 254.4(c)(7) would require documentation of any agreed upon compensation of assumed costs which are normally the responsibility of the other party, but that nowhere in the regulation are these responsibilities laid out. It was suggested that the final rule spell out what costs are normally to be borne by either party. Section 254.7 of the rule gives a partial listing of costs for which compensation may be made, but it would be inappropriate to assign responsibility in this rule, as responsibilities may vary between localities. The assignment of responsibility is best made by the authorized officer, in accordance with local common practices.

Another respondent suggested that the requirement of paragraph (c)(11) of this section of the proposed rule, regarding relocation of tenants on involved non-Federal lands, should apply on an equal basis to the Federal lands and any occupants. This suggestion was not adopted. The application of relocation benefits pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, 4651) applies only to qualified displaced parties on acquired non-Federal lands. Under paragraph (c)(3) of this section of the rule, there is a requirement to identify any legitimate users of the involved Federal lands authorized to occupy those lands. Section 254.15(c)(2) of the rule specifies the measures required to protect such authorized users.

Two parties asked that paragraph (c)(11) also be used to establish the sequence and timelines for other required reports or clearances. The requirement that the agreement provide a timeline is already specified in paragraph (c)(5) of this section; the sequence of preparing or approving required reports is subject to negotiation and agency administrative procedures.

Another respondent recommended deleting the entire second sentence of paragraph (d) of this section of the proposed rule, which provided that, in the absence of current market information reliably supporting values, the parties may agree to use other acceptable and commonly recognized methods to estimate values. This respondent said that this provision is "inconsistent with" and would "eviscerate" § 254.9 of the rule. To the contrary, this provision is identical to the provision of § 254.9(b)(3) of the rule. This provision allows the use of other methods to determine the value of unique properties, for which there are no comparable sales.

Several respondents questioned whether any authority exists to deny appeal rights to exchange proponents, or anyone else, when the Federal or non-Federal parties withdraw from an exchange proposal as provided in paragraph (g) of this section of the proposed rule. One of the parties recommended deleting this paragraph. Another felt there should be no appeal if the non-Federal party withdraws. The final rule retains paragraph (g) as proposed. As provided by § 254.4(c) of the rule, an agreement to initiate an exchange is nonbinding on all parties. An administrative appeal opportunity is, therefore, illogical and meaningless. However, pursuant to § 254.13, final notices of decision of the Federal authorized officer are appealable.

Section 254.5—Assembled land exchanges. This section of the proposed rule addressed procedures to be followed when an entity has assembled non-Federal parcels from multiple ownerships and offers the assembled parcels for exchange as one transaction. Several States expressed concern that under the proposed regulations States might be considered single owners of multiple parcels involved in an exchange, resulting in lower appraised values, when compared with an assembled multiple ownership exchange. States or any other landowners may qualify for assembled land exchanges and the valuation procedures discussed in § 254.9(b), if they assembled the offered non-Federal parcels from multiple ownerships, in accordance with the terms of an agreement to initiate. This provision of the final rule did not change from the proposed.

Section 254.6—Segregative effect. This section of the proposed rule provided for withdrawal of Federal lands and interests in lands from entry under public land and mineral laws for up to 5 years when a proposal is made to exchange Federal lands. One respondent felt that no further segregation authority should be provided because too much land has been withdrawn in the past. Another felt the statutory authority for the five-year segregation is limited to the "mining laws" not the "public land laws." This rule provides no additional segregation authority, but merely allows segregation by record notation in lieu of publication in the **Federal Register**. It is true that the Federal Land Exchange Facilitation Act only allows for segregation from appropriation under the mining laws. However, public land law segregation to protect the Federal and non-Federal parties from competing lands actions during consideration of an exchange is authorized by section 204(b) of the Federal Land Policy and Management Act of 1976; that authority was not rescinded by the Federal Land Exchange Facilitation Act. Segregation of lands provides stability which allows appraisal of values and processing toward conveyance without disruption from subsequent entry onto the Federal lands. Accordingly, this provision was retained in the final rule.

One respondent raised a question regarding the effect on right-of-way authorizations that expire during the segregative period. That respondent felt

that the holder of a right-of-way should have the ability to renew during the period of segregation. The rule would not prohibit such renewal. The segregation is from the mining laws and the public land laws only. The public land laws as defined in § 254.2 of the rule deal with the disposal of National Forest lands reserved from the public domain. Rights-of-way are not disposal actions and, therefore, are not affected by the segregation.

Section 254.7—Assumption of costs. This section of the proposed rule sets out those costs the authorized officer may assume without compensation and how parties may be compensated for assumption of costs normally borne by the other party. Thirty-one comments were received on this section of the proposed rule. A major concern of the respondents related to the criteria in paragraph (b) that determine if the authorized officer can compensate the other parties for assumption of costs or assume the costs without compensation from the other parties. They felt these criteria placed unwarranted limitations on the exercise of the cost compensation authority granted by the Federal Land Exchange Facilitation Act. The Act requires the Secretary to determine if it is in the public interest to make adjustments to values by compensating the non-Federal party for assuming certain costs. Therefore, it is necessary in the rule to establish when Federal compensation or assumption of costs is in the public interest. Failure to do so would provide an environment that could foster arbitrary, capricious, and inconsistent decisions. These criteria are retained without change in the final rule to ensure that compensation for costs assumed is in the public interest.

A concern was expressed that cash equalization funds for compensation not be restricted to specific exchanges but be available in a general exchange fund so processing is not affected by budget delays. Cash equalization funds are appropriated and made available to the Forest Service in a general fund for use in any qualifying land exchange. Therefore, Federal cash equalization needs seldom delay case processing.

One respondent suggested that compensation be allowed whenever it is in the best interest of both parties, rather than on an "exceptional basis." Mutual interest is an essential ingredient of every land exchange; however, the government must be concerned with the aggregate effect of cost compensation. Without a limitation on Federal cost assumption compensation, the United States taxpayer could end up paying disproportionate costs in the aggregate for land exchange. Therefore, the Department believes the "exceptional circumstance" limitation is appropriate and necessary to protect the public interest and it has been retained in the final rule.

It appeared to one respondent that there was no restriction on the adjustment of relative values, other than the 25 percent cap, to adequately protect the government from bearing undue costs. In fact, however, the Federal Land Exchange Facilitation Act states that the amounts to be compensated must be reasonable and must accurately reflect the value of the cost and service. This wording is incorporated in paragraph (b)(1) of this section of the rule as one of the five criteria that must be met before compensation can be paid. Each exchange has specific circumstances, so anything other than general restrictions could impede an exchange, which would be counter to the intent of the Act. The five criteria contained in paragraph (b), along with the 25 percent limitation of § 254.12, offer the authorized officer reasonable parameters for ensuring that Federal assumption of costs or compensation for costs assumed by other parties is in the public interest.

It was suggested that the term "in the public interest" be defined. A public interest determination involves many factors, as described in § 254.3(b) of the rule. However, for purposes of assumption of non-Federal costs without compensation and for compensation of non-Federal parties who assume Federal processing costs, § 254.7(b) of the rule sets forth the circumstances under which such purposes are deemed to be in the public interest. Therefore, this suggestion was not adopted.

A suggestion was made to spell out which costs will be borne by whom within the agreement to initiate an exchange. As previously noted, § 254.4(c) of the rule provides that an agreement to initiate must assign responsibility for costs and specify whether certain costs will be compensated.

Two respondents stressed the need to list the costs associated with the completion of NEPA documentation as not necessarily being costs associated with the Federal government's portion of the exchange. This suggestion was not adopted. There are many requirements involved in a land exchange. Section 254.4(c)(6) of the rule requires an assignment of responsibility for performance of required functions and for costs associated with processing an exchange in the agreement to initiate. NEPA documentation is one of those required functions and is typically a responsibility of the Federal agency.

One respondent wanted to make sure that the costs associated with the cultural resources survey, mitigation including excavation, reports, and coordination with the State Historic Preservation Officer (SHPO), are considered. This was adequately covered in the proposed rule and is retained in the final rule at § 254.7(a)(2) which states that parties may agree to make adjustments in relative values to cover costs which include cultural resource surveys and mitigation.

One reviewer suggested clarifying paragraph (b) is as it applies to agreement to initiate provisions under paragraph (a) of this section of the rule. The criteria for compensation or assumption of costs listed in paragraph (b) should be determined by the authorized officer, documented in either the agreement to initiate or in a separate document, and made part of the case record file for that land exchange.

It was suggested that costs incurred by the non-Federal party as a result of the Federal government being a party to the exchange should be compensated by the government. This respondent further stated that paragraph (b) of this section of the proposed rule attempted to combine compensation to the non-Federal party with compensation for Federal costs and, thus, was vague. Each exchange is based on its own unique situation. The special requirements of each party, including the United States, must be addressed on a case-by-case basis. It would be unnecessary to require compensation of the non-Federal party as a standard matter of practice. In every exchange case, the authorized officer is required to establish which party has the responsibility for accomplishing and paying for each step of the exchange process. Those processes and their costs which are the responsibility of the United States will be borne by the Forest Service, unless the non-Federal party voluntarily agrees to assume them.

Section 254.8—Notice of exchange proposal. Several respondents requested that the regulation specifically state that the State government be notified at the time of the notice of exchange rather than waiting until the notice of decision. One of these also requested that the congressional delegation be included in this notice of exchange proposal. These recommendations were adopted and are included in paragraph (a) of this section of the final rule.

A right-of-way holder requested that notice be provided to the authorized users concurrent with the publication of the first newspaper notice. Concurrent notice to all authorized users, including right-of-way holders, was specified in

paragraph (a) of this section of the proposed rule and is retained in the final rule.

One respondent questioned if the notice would be published in all newspapers in the counties in which the lands to be exchanged are located. Paragraph (a) of this section of the rule requires a notice to be published in a newspaper of general circulation in the counties where the Federal and non-Federal lands involved in the exchange proposal are located. That could require publication in one or more newspapers, or in a single newspaper that covers several counties, as needed to notify the public.

One respondent suggested that paragraph (a)(4) of proposed § 254.8 be revised to make it clear that public comments regarding the environmental impacts of the proposed exchange are being sought. This respondent also felt paragraph (a) should include a statement describing the present use and proposed use of the lands to be exchanged and asked for clarification of the meaning of "description" of the lands being considered for exchange. Paragraph (a)(4) of the proposed rule stated that comments would be sought from the public and that timely comments would be considered in the environmental analysis of the proposal; however, the language was not as clear as it might be. Therefore, in the final rule, paragraph (a)(4) has been revised to make clear that the public is invited to submit any comments on or concerns about the exchange proposal, including advising the agency on any liens or other encumbrances or claims related to the lands. Paragraph (b) then links receipt of these comments to the environmental analysis. As previously noted, additional opportunity for public input during environmental analysis will be offered as appropriate. A primary purpose of the notices of exchange proposal is to identify those persons with interests in the lands or claims against the involved properties. To facilitate such notification, the properties must be described legally. However, the authorized officer may include additional information, as appropriate, for ease of identifying the lands. Information regarding intended uses of the involved lands is always available at the local agency office.

Two respondents expressed confusion as to when the public is notified. The public is notified first of a proposed exchange when the parties enter into an agreement to initiate and again when a decision is reached.

Two respondents suggested that the notice to authorized users should be by certified mail. However, this suggestion was not adopted; the authorized officer needs the freedom to choose the best and most appropriate means to notify authorized users, including certified mail.

A State government official requested that notice be given by **Federal Register** publication. Although **Federal Register** notice would reach groups on a national scale, newspaper publication is a more effective way to reach most interested and potentially affected persons and groups. This, in combination with the direct notice requirements of paragraph (a), will ensure effective notice. Additional requirements to give notice in the **Federal Register** would be administratively burdensome, costly, and redundant.

One respondent expressed confusion as to how the notice of exchange proposal relates to forest plan notices. Unless the proposed exchange requires a land and resource management plan amendment or revision, the notice of exchange proposal has no relationship to land and resource management planning.

In addition to the changes made in response to comments, paragraph (a) was revised in the final rule to explicitly require that the notice of exchange proposal include the deadline for comments to be received and the name, title, and address of the official to whom comments should be sent and from whom additional information may be obtained.

Some respondents suggested that minor modifications to the notice of exchange, for example, in the case of acreage adjustments to equalize values, should not have to be republished because republication would be counter to the intent to expedite exchanges. Minor corrections of descriptions or acreages or reduction of published acreages to achieve equal values do not require republication. However, any addition of new lands to achieve equal values, not previously published, will require republication. This was a provision of the proposed rule and is retained in the final rule.

Section 254.9—Appraisals. A respondent expressed concern with the reference to the Uniform Appraisal Standards for Federal Land Acquisitions, since those standards are focused on acquisition under threat of condemnation; the respondent recommended instead that the Standards of Professional Practice promulgated by the American Institute of Real Estate Appraisers (now the Appraisal Institute) be adopted as the accepted standard. This recommendation cannot be fully adopted. The Federal Land Exchange Facilitation Act directs the agencies to comply with appraisal standards set forth in "Uniform Appraisal Standards for Federal Land Acquisitions" to the extent practical. The appraisal standards adopted in this rule are consistent with that direction. However, some aspects of the Uniform Standards of Professional Appraisal Practice regarding appraisal standards, which the Appraisal Institute has adopted, have been incorporated in § 254.9 of this rule.

Two professional appraisal organizations suggested that BLM and the Forest Service adopt the Uniform Standards of Professional Appraisal Practice to assure consistency and quality in appraisals. The Uniform Standards of Professional Appraisal Practice include standards for all categories of appraisal, including real and personal property, and are more general than the Uniform Federal Standards. The Uniform Appraisal Standards for Federal Land Acquisitions set detailed requirements for the act or process of estimating value. Since the Uniform Standards of Professional Appraisal Practice define an appraisal report differently from that generally recognized by Federal agencies, this suggestion was not adopted. The appraisal standards in this rule apply specifically to land exchanges entered into by BLM and the Forest Service. They reflect standards applicable to exchange transactions and appraisals or appraisal reports as defined in § 254.2 of the rule. The standards are consistent with the Uniform Standards of Professional Appraisal Practice and incorporate the Government-wide Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference 1992 (Washington, DC, 1992), ISBN 0–16–038050–2 and the Department of Transportation standards of appraisal (49 CFR part 24, subpart B).

(a) *Appraiser qualifications.* Several comments were received regarding the proposal to require appraisers to be certified or licensed under State law. Two believed requiring all appraisers to be State certified or licensed was impractical and possibly premature, since many States have not fully enacted their appraisal certification laws. One of the two suggested that State certification or licensing should be a goal and not a requirement. Two professional appraisal organizations expressed support for the provision.

Eighteen States currently require all appraisers to be either certified or licensed regardless of the type of real estate transaction. The remaining States require only those appraisers involved in appraising property for Federally

regulated financial agencies to be certified or licensed. In some States, appraisers not involved in Federally related financial transactions may voluntarily become certified or licensed.

Federal real estate appraisers performing appraisal assignments related to their jobs are generally exempt from State licensing requirements. However, for purposes of supporting uniform national standards for appraisers, it is important that agency appraisers be qualified and meet training and experience standards adopted by State regulatory agencies. To eliminate potential problems resulting from uneven progress by the States in implementing certification or licensing requirements, the final rule has been revised to require qualified appraisers to possess qualifications consistent with State regulatory requirements meeting the intent of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Consequently, the agency will assist and encourage staff appraisers to become certified or licensed. Where it is unnecessary or impractical to meet State requirements, staff appraisers will possess qualifications consistent with generally accepted State regulatory requirements in other States as established by each agency.

One State government agency explained that its staff appraisers were exempt from certification requirements under the State law. This official suggested that the rule be revised to clearly indicate that State agency staff appraisers who are exempt from the State requirements be recognized as being qualified to do exchange proposals. This suggestion was partially adopted. Appraisers exempt from State law do not have to be certified or licensed. However, the appraisers in Federal land exchanges must meet standards generally comparable to State training and experience qualifications as established by the Forest Service and BLM.

Another comment expressed concern that criteria for a qualified appraiser did not address reciprocity; i.e., a State agreement to accept State certification and licenses issued by other States. This person felt that unless the States generally agreed on qualification standards that permitted reciprocity, it would be difficult for agency and contract appraisers to appraise in States other than those in which they are certified or licensed. Inconsistent State standards will hamper the free flow of appraisal services across State boundaries; however, reciprocity is a State issue, not a matter under Forest Service or BLM jurisdiction. Therefore, the rule was not revised to address reciprocity.

The definition of a qualified appraiser contained in the proposed rule included a provision that the appraiser be approved by the authorized officer. Three persons suggested this was unfair and that instead, the parties should agree on selection of the appraiser. The authorized officer must approve the appraiser agreed upon and selected by the parties. As provided in § 254.4 of the proposed rule and retained in the final rule, the parties, in arranging for appraisals, must agree on the selection of a qualified appraiser.

One person interpreted the first sentence in paragraph (a)(1) of this section of the proposed rule to require the agency to use one appraiser for both the Federal and non-Federal lands in all cases. This respondent suggested the paragraph be changed to allow use of a second appraiser when only one side of an exchange is in dispute. There was no intention to require only one appraiser to appraise both the Federal and non-Federal lands. In response, the final rule refers to "appraisers" to alleviate this potential misunderstanding.

(b) *Market value.* Paragraph (b) of § 254.9 of the proposed rule set out standards to guide appraisers. A respondent suggested that paragraph (b)(1)(iii) be modified to require that consideration of prices paid for similar properties be limited to properties "in the same general location as the subject property." This limitation would severely restrict an appraiser's analysis of properties possessing unique historic, wildlife, recreation, wilderness, scenic, or other resource values, for which comparable property transactions may be beyond the general location of the subject property; therefore, the suggestion was not adopted.

Several comments were received asking that the list of resource values in paragraph (b)(1)(iii) of this section of the proposed rule be expanded to include watershed and archaeological values. This suggestion was not adopted. It is impracticable to list all resource values to be considered by the appraiser, and the list is merely suggestive, not all inclusive. The phrase "and other resource values or amenities" covers all other resources that may have value in the private competitive market, including watershed and archaeological values.

A reviewer suggested that paragraph (b)(1)(iv) of this section of the proposed rule be revised to require the appraiser to consider water rights along with timber and mineral interests. The reviewer noted that water rights may be transferred in an exchange, but, depending on the State, may not be considered to be an "interest in the land." This suggestion was adopted.

Several comments were received indicating an apparent conflict between instructions in paragraphs (b)(1)(v) and those in (b)(1)(vi) of this section of the proposed rule, regarding how to appraise multiple properties in an assembled exchange. Paragraphs (b)(1)(v) and (vi) of the proposed rule were combined into paragraph (b)(1)(v) of the final rule to clarify that if stipulated in an agreement to initiate, lands assembled from multiple ownerships can be appraised separately.

Several people commented on proposed paragraph (b)(1)(vii), which would have required the appraiser to disregard any change in market value caused by the intent of the agency to acquire the non-Federal property. One recommended "similar protection" for the non-Federal party. Another suggested adding an exclusion for property where the intended use is the highest and best use. Another stated that this paragraph "clearly violates" the provision of the Act that requires that the same nationally approved appraisal standards be used in appraising both the Federal and non-Federal lands. This respondent further stated that the paragraph should be deleted or the non-Federal parties should be afforded the same protection. In response, the Department believes these are valid points and has removed this provision from the final rule.

A mining industry association suggested that this paragraph of the rule include a statement that appraisers should disregard any increase in value to Federal lands resulting from a non-Federal party's particular need to acquire the land. It was the association's belief that appraisers overvalue Federal lands adjacent to operating mines. This suggestion was not adopted, since the appraiser must take into consideration all potential buyers and uses of the property, including possible purchase by adjacent property owners. The value estimation should reflect motivational factors evident in similar transactions, i.e., sales of abutting lands.

One respondent thought that standardized appraisal methods may not be applicable to exchanges in Alaska, as there are very few sales, lands are often unsurveyed, and very little information is available regarding resource values, particularly mineral values. This person suggested that the authorized officer be permitted to instruct the appraiser to use the best procedure available to provide a reasonable estimate of value. This contingency was already provided for in proposed paragraph (b)(2) of this

section, which would allow the authorized officer to use other acceptable methods to estimate values when market information is not readily available. This provision is retained as paragraph (b)(3) in the final rule.

One reviewer suggested reliance on the "departure" provisions of the Uniform Standards of Professional Appraisal Practice, which would permit an appraiser to indicate the basis for using only the market approach to value (as opposed to all three approaches—market, cost, and income). This suggestion was not adopted, as the principal direction for Federal appraisals comes from the Uniform Appraisal Standards for Federal Land Acquisitions, which specifies the direct comparison or market approach as the preferred approach. The Uniform Standards of Professional Appraisal Practice supplements the Federal standards.

In addition to the changes made in response to comments, paragraphs (b)(1)(vi)(A), (B) have been redesignated in the final rule as paragraphs (b)(2)(i), (ii) for clarity. Paragraph (b)(2) is thus redesignated as (b)(3) in the final rule.

(c) *Appraisal report standards.* Three respondents expressed concern that language contained in paragraph (c)(5) of this section of the proposed rule was vague and could subject appraisers to open-ended liability regarding disclosure of potentially hazardous environmental conditions. Upon review, the Department agrees with these comments. As a result, this provision has been modified to require the appraiser to disclose in the appraisal report any condition that is observed during the inspection of the property or becomes known to the appraiser through normal research that would lead the appraiser to believe that hazardous substances may be present on the property being appraised.

One person expressed concern over the lack of sufficient safeguards against potential "windfalls." This respondent suggested that two independent appraisals be required on exchanges when land values exceed $300,000. Such a requirement is unnecessary, as dollar thresholds are not reliable indicators that an appraisal assignment is complex and, therefore, requires another independent valuation. Further, such a regulatory requirement would increase processing costs and could delay a land exchange. The need for two appraisals should be determined by the parties involved in an exchange and should be based on the complexity of the appraisal.

One respondent observed that parties to an exchange would be required to invest considerable time and expense in conducting studies, appraisals, and title clearance before an informed decision could be made whether to pursue the exchange. Since values can change over a period of time, it was suggested that once the parties agree on value, those values be binding for a period of not to exceed two years. This suggestion was not adopted. The parties must agree to pursue an exchange early in the process, in an agreement to initiate, before incurring any significant investment of time and expense. However, until a binding exchange agreement is entered, all parties are subject to loss of their investments if any party decides that the proposed exchange is no longer feasible. The signing of a binding exchange agreement pursuant to § 254.14 fixes the agreed upon values and commits the parties to continue until the transaction is completed. This avoids last-minute changes in values and other elements of the exchange which could jeopardize the stability that is necessary for closing any real estate transaction.

Another person suggested that paragraph (c)(10)(ii) of this section of the proposed rule, requiring all appraisers to certify that they personally examined all comparable sales, could be unrealistic. This reviewer felt that since comparable properties may be located in many different areas of a State or other regions of the country, this provision may be unnecessarily costly and lead to inordinate delays. This suggestion was not adopted. It is a long-standing requirement of Federal appraisal standards and a requirement of the Uniform Standards of Professional Appraisal Practice that an appraiser must make a personal on-site examination of the comparable sales to perform an accurate comparative analysis.

(d) *Appraisal review.* There were few comments regarding appraisal review. However, one appraisal organization concurred with the outlined review process and suggested requiring additional education and experience for an appraiser to be considered a qualified review appraiser. Although additional education and experience are always desirable, the standards set forth in paragraph (a) of this section of the rule are adequate in that they require the appraiser to possess the minimum qualifications consistent with State regulatory requirements meeting the intent of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Other comments suggested that the review appraiser should be an agency employee and that the reviewer should be appointed by the authorized officer. These suggestions were not adopted. Paragraph (a) of this section of the final rule would allow reviewers to be employees or contractors of the Federal or non-Federal exchange parties, to provide for those situations when it is in the public interest to use a qualified non-Federal review appraiser. Additionally, it should be noted that the authority to review appraisals is delegated by the Secretary to the Chief Appraiser, instead of to the authorized officer, to maintain the independence of the valuation process from the exchange negotiation process.

Section 254.10—Bargaining; arbitration. Sixteen comments were received on this section of the proposed rule objecting to: (1) Appointment of an arbitrator by the Secretary; (2) allowing an arbitration decision to be binding for a period not to exceed 2 years; (3) allowing the agency 180 days for review of the appraisal; and (4) limiting arbitration to issues regarding value of the property. No change was made to the rule in response to these comments, as these provisions are specific requirements of section 3 of the Federal Land Exchange Facilitation Act.

One person felt this section should clarify who would pay the costs of arbitration. This suggestion was not adopted. First, the costs of arbitration may be addressed in an agreement to initiate. Second, if the parties have not reached prior agreement on paying arbitration costs, the rules of the American Arbitration Association, which the Exchange Facilitation Act specifies must be used, provide for the assignment of costs.

Section 254.11—Exchanges at approximately equal value. One respondent felt the $150,000 limit was too high and recommended establishing a level consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. This suggestion was not adopted. The $150,000 limit was established by the Federal Land Exchange Facilitation Act of 1988.

Section 254.12—Value equalization; cash equalization waiver. One respondent stated that the rule should provide safeguards against windfalls, asserting that non-Federal parties acquiring property under the guise of an equalization payment are actually purchasing that land with no competition. This suggestion was not adopted, as section 206(b) of the Federal Land Policy and Management Act of 1976 established sufficient restrictions to limit the use of cash equalization payments in land exchanges to the minimum necessary.

One respondent stated that BLM should have the same prohibition on waiving payments as the Forest Service. Another felt that the Forest Service should revise its rule on cash waivers to be in line with BLM. This recommendation cannot be adopted. The Exchange Facilitation Act's prohibition on waiver of payment of cash equalization applies only to the Secretary of Agriculture.

It was suggested that the 25 percent limitation not be applied in Alaska and that the guidance of the Alaska National Interest Lands Conservation Act should be used instead. This is already accommodated in § 254.1(c) of the rule, which specifies that the rules apply to exchanges made under the authority of the Alaska Native Claims Settlement Act or the Alaska National Interest Lands Conservation Act, except to the extent to which the rules conflict with provisions of those Acts.

Two respondents were concerned about the 25 percent limitation imposed by the regulations. One felt this limitation is not in compliance with the Federal Land Policy and Management Act of 1976 and the Federal Land Exchange Facilitation Act, and that while section 206(b) of the Federal Land Policy and Management Act of 1976 limits equalization to 25 percent of the value of the Federal lands, the Exchange Facilitation Act provides that any adjustment can be made to the relative value of the lands for assumption of costs. The respondent asserted that, therefore, these limitations are independent. The other felt the agency is limiting the ability to complete exchanges with this provision. The Exchange Facilitation Act provides discretionary authority to the Secretary to adjust relative values to compensate for costs assumed in accordance with terms of the Agreement to Initiate. In accordance with § 254.7 of the rule, such compensation will be made by cash equalization payment under authority of section 206(b) of the Federal Land Policy and Management Act of 1976, and therefore, will be subject to the 25 percent limitation of that authority.

Section 254.13—Approval of exchange; notice of decision. A State agency felt that notification to States will occur too late as all appraisals and reviews will have been completed. The notice under this section of the rule advises interested and concerned individuals and organizations that the proposed exchange has been approved. The earlier notice of exchange proposal sent to State and local governments, and others, under § 254.8 of the rule, is intended to provide all who are interested an opportunity to comment on the proposed exchange before the appraisal(s) and environmental analysis.

One respondent recommended that the Forest Service appeal regulations be amended to incorporate land exchange decisions as appealable actions. This recommendation was not adopted. Land exchange decisions are subject to Forest Service appeal regulations at 36 CFR part 217 and part 251, subpart C. This section of the land exchange rules merely informs readers of the applicability of the appeal regulations.

In response to a reviewer who asked when the appeal period would begin, paragraph (b) of this section of the rule was revised to be consistent with the administrative appeal regulations which specify that the appeal period begins after publication of a notice of the decision.

Some respondents addressed the duplicative publication of information required by the two exchange notices and the associated increased workload. While there are two publication requirements, each serves a different purpose. The first is essential to apprise the public of the agency's intent to initiate a land exchange and to obtain public comment. The second notice is equally important; it provides notice of the final decision on the proposal and affords the opportunity for appeal.

Two respondents expressed concern that, because of the notice and appeal procedures, appraisals may become outdated before completion of an exchange. Paragraph (a) of § 254.14 of the rule addresses that contingency. When there is concern that consummation of a land exchange may be delayed beyond the life of the appraisal(s), the parties to the exchange have the option of entering a binding land exchange agreement, upon approval of the exchange, which serves to lock in the appraised values.

Section 254.14—Exchange agreement. One respondent suggested that an appraisal could be reviewed and approved in advance of an exchange agreement. No change in the rule is needed. The appraisal is always reviewed and approved in advance of entering an exchange agreement provided under this section of the rule.

Section 254.15—Title standards. One respondent suggested expanding the discussion of the various types of conveyance documents and their associated degree of warranty. Since this rule does not change established methods of conveyance, this suggestion was not adopted. Detailed descriptions of the various forms of conveyance are addressed in other sources, such as Department of Justice title standards.

One respondent suggested that this section be revised to state that title would be accepted by both parties as set forth in the agreement to initiate. This suggestion was not adopted. While the parties to an exchange may include general terms concerning case closing matters in an agreement to initiate, title acceptance is dependent upon instructions, requirements, and conditions which can be set forth only at the end of the exchange process, rather than at the beginning. The requirements for title acceptance are presented in § 254.16 of the rule.

Another remarked that the authorized officer should be given discretionary authority to acquire lands with reservations or outstanding rights that could be construed to interfere with Federal use or management of the land. This suggestion could not be adopted. Agency policy (Forest Service Manual 5430.3) requires that property acquired by the United States cannot contain reservations or outstanding rights that are inconsistent with the purpose for which the lands are being acquired.

A spokesperson for an environmental group said that paragraph (c)(1)(iii) of this section of the rule should require the government to seek the costs of removing personal property from the lands to be acquired if the non-Federal party fails to do so. This does not need to be explicitly stated. This paragraph of the rule provides sufficient authority to the authorized officer to condition acceptance of title upon the removal of any personal property.

Several respondents felt the proposed rule did not provide sufficient protection for existing third party special uses of Federal land following an exchange of title. As previously noted, § 254.4 of the rule was revised to address authorized uses in the agreement to initiate. Further, agency policy (Forest Service Manual 5403.1 and 5430.3) requires recognition and protection of authorized third party uses to the extent appropriate, although, if in the public interest, the regulations at 36 CFR 251.60(b) provide for termination or revocation of special-use authorizations if the involved lands are transferred out of Federal ownership.

A respondent recommended that the non-Federal exchange party be required to offer a perpetual easement to replace the Federal authorization. This suggestion was not adopted. The United States has no general authority to require a non-Federal exchange party to offer any alternative use arrangement to the holder of a Federal special-use authorization. However, if the exchange party offers to continue the terms of an existing permit, then the termination or

revocation of the Federal permit to facilitate an exchange is more justifiable. Although a land exchange party and an authorized user may agree to a permanent right of use, the users are generally granted authorizations with terms similar to the Federal authorizations by the non-Federal exchange party.

Three comments offered by the ski industry stated that lands occupied by a ski area should not be exchanged without the specific consent of the permittee. This suggestion was not adopted, as holders of ski area permits are afforded the same consideration as is afforded other types of special-use holders. Federal special-use authorizations of all types are revoked or terminated to facilitate a land exchange of the involved Federal lands only when it is found to be in the public interest. In such case, the agency will encourage the non-Federal exchange party to reach agreement with the holder of a Federal special-use authorization to furnish privileges equal to those enjoyed by the user under the Federal permit.

A suggestion was received from one respondent that when a non-Federal exchange party offers to provide for the continued use of the Federal lands, under substantially the same conditions after the exchange, objections raised by the third party user should not be permitted to prevent the completion of, or cause modifications to, a proposed exchange. To adopt this suggestion would require amendment of the agency's appeal rule. Moreover, it is unlikely to be in the best interest of a third party user to appeal if the same use and substantially same conditions have been offered. The failure of an authorized user to agree to terms offered by the non-Federal party, when their rights are protected generally, would not jeopardize the consummation of an exchange. However, the agency believes that the third party user should retain the right to an administrative appeal to protect the third party's interests.

An industry respondent requested that the regulation clarify that (1) a mineral lease holder would not be required to negotiate with a non-Federal exchange party, (2) the holder of a Federal mineral lease could reject any proposed agreement from the non-Federal exchange party related to uses authorized by the lease, (3) the proposed regulations would have no effect on existing lease terms and conditions, and (4) BLM could not terminate or interfere with the exercise of valid lease rights, unless otherwise specifically provided for in the Federal lease. In recognition of the unique rights of holders of Federal mineral leases, paragraph (a)(2) of § 254.15 of the rule has been revised to apply only to non-mineral leases.

Another comment from the business sector was that the regulation should permit only those reservations to be placed on the Federal land that were first specified in the agreement to initiate. However, after an agreement to initiate is entered, additional rights and reservations may be identified that must be recognized. Therefore, the rule does not adopt this comment.

A respondent suggested that proof of an agreement between the third party user and non-Federal exchange party should not be required at the time the exchange is approved but should be required upon entering into an exchange agreement. The Department disagrees. The decision to proceed with an exchange cannot be made without considering the effects of the proposal on authorized uses on the involved Federal lands.

Section 254.16—Case closing. It was suggested that paragraph (a) of this section of the rule refer to patents or "other documents of conveyance." However, patents and deeds are the only forms of conveyance by the Federal government.

It was pointed out that acceptance of title needs to be precisely defined in order to determine when the 90-day segregation period begins. The Department agrees. This section has been revised to clarify that acceptance of title occurs upon recordation and that the segregation period for the acquired non-Federal lands terminates midnight of the 90th day after recordation.

A reviewer suggested specifying that the authorized officer accept title and that the date of acceptance be noted on the land records. This suggestion has been partially adopted. Paragraph (b) of § 254.16 of the final rule has been rewritten to state that title acceptance occurs upon recordation, rather than by action of the authorized officer, and provides for notation of the date of acceptance.

One respondent felt that "Case Closing" was an inappropriate title and suggested "Acceptance of Title" instead. This section of the rule deals with automatic segregation in addition to title acceptance. Therefore, the more general title of "Case Closing" was retained.

It was suggested that paragraph (b) of this section of the rule add the regulatory citation for withdrawal. A citation to 43 CFR part 2300 has been added.

Two respondents expressed concern that if the lands acquired are to be withdrawn, a 90-day segregation would be insufficient to complete a withdrawal. Although 90 days may not provide enough time to complete a withdrawal, further segregation may be possible upon withdrawal application under 43 CFR part 2300. Paragraph (b) has been revised to clarify that unless a withdrawal is initiated within the 90-day period, segregation will expire.

An environmental group pointed out that exchanges are final only after the administrative appeal process had been completed. This is correct but no change was needed in the rule. Title does not transfer until any administrative appeal has been resolved, and the deed has been recorded.

A State government respondent suggested that a time constraint be placed on the Office of the General Counsel review. This is undesirable and impracticable. Legal review of complicated title issues can be time consuming, but it is a critical step in any land exchange.

Concern was expressed that in paragraph (a) of this section of the rule the word "only" reverses the meaning and intent of Section 3(a) of the Act and should be deleted. As previously noted, this paragraph has been revised in the final rule and this problem has been eliminated through the rewording.

Section 254.17—Information requirements. The agreement to initiate an exchange and the exchange agreement required by §§ 254.4 and 254.14 of the rule represent new information requirements as defined in 5 CFR part 1320, Controlling Paperwork Burdens on the Public. The agency estimates that each non-Federal party to a land exchange proposal will spend an average of 4 hours preparing and submitting the information required in an agreement to initiate an exchange and an exchange agreement.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320, the Forest Service requested, in conjunction with the publication of the first proposed rule, and, on August 3, 1989, received, approval from the Office of Management and Budget (OMB) for the information to be addressed in an agreement to initiate or an exchange agreement. The information collection was assigned OMB Control No. 0596–0105 and was approved for use through June 30, 1992 On May 1, 1992, the Forest Service requested approval of an extension of the information collection. That approval was granted by OMB on June 11, 1992. The information collection has now been approved for use through June 30, 1995.

Regulatory Impact

The rule has been reviewed under USDA procedures and Executive Order 12866 on Federal Regulations. It has been determined that this is not a significant rule. The rule contains minimum procedures necessary to implement the Exchange Facilitation Act. The rule will not have an effect of $100 million or more on the economy; will not substantially increase prices or costs for consumers, industry, or State or local governments; nor will it adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets.

The rule has been considered in light of Executive Order 12630 concerning possible impacts on private property rights. E.O. 12630 exempts from takings implications assessment activities which are consensual in nature between the United States and non-Federal parties. Exchanges are consensual, and, therefore, do not raise takings issues. Accordingly, no further consideration of takings implications were deemed necessary in this rule.

Moreover, this rule has been considered regarding the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant impact on a substantial number of small entities.

Section 31b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." Based on consideration of the comments received and the nature and scope of this rulemaking, the Department has determined that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule were adopted, (1) all state and local laws and regulations that are in conflict with this proposed rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

List of Subjects in 36 CFR Part 254

Land Exchanges, National forests

Therefore, for the reasons set forth in the preamble, part 254 of Title 36 of the Code of Federal Regulations is hereby amended by revising subpart A to read as follows:

PART 254—LANDOWNERSHIP ADJUSTMENTS

Subpart A—Land Exchanges

Sec.

Subpart A—Land Exchanges

Authority: 7 U.S.C. 428a(a) and 1011; 16 U.S.C. 484a, 485, 486, 516, 551, and 555a; 43 U.S.C. 1701, 1715, 1716, and 1740; and other applicable laws.

§ 254.1 Scope and applicability.

(a) These rules set forth the procedures for conducting exchanges of National Forest System lands. The procedures in these rules may be supplemented by instructions issued to Forest Service officers in Chapter 5400 of the Forest Service Manual and Forest Service Handbooks 5409.12 and 5409.13.

(b) These rules apply to all National Forest System exchanges of land or interests in land, including but not limited to minerals, water rights, and timber, except those exchanges made under the authority of Small Tracts Act of January 12, 1983 (16 U.S.C. 521c–521i) (36 CFR part 254, subpart C), and as otherwise noted. These rules also apply to other methods of acquisition, where indicated.

(c) The application of these rules to exchanges made under the authority of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1621), or the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192), shall be limited to those provisions which do not conflict with the provisions of these Acts.

(d) Unless the parties to an exchange otherwise agree, land exchanges for which the parties have agreed in writing to initiate prior to April 7, 1994, will proceed in accordance with the rules and regulations in effect at the time of the agreement.

(e) Except for exchanges requiring cash equalization payments made available through the Land and Water Conservation Act of 1965, as amended (16 U.S.C. 460[1]9], the boundaries of a national forest are automatically extended to encompass lands acquired under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 516), provided the acquired lands are contiguous to existing national forest boundaries and total no more than 3,000 acres in each exchange.

(f) Exchanges under the Weeks Act of March 1, 1911, or the General Exchange Act of March 20, 1922, may involve land-for-timber (non-Federal land exchanged for the rights to Federal timber), or timber-for-land (the exchange of the rights to non-Federal timber for Federal land), or tripartite land-for-timber (non-Federal land exchanged for the rights to Federal timber cut by a third party in behalf of the exchange parties).

(g) Land exchanges involving National Forest System lands are authorized by a number of statutes, depending upon the status (conditions of ownership) of such lands and the purpose for which an exchange is to be made. The status of National Forest System land is determined by the method by which the land or interests therein became part of the National Forest System. Unless otherwise provided by law, lands acquired by the United States in exchanges assume the same status as the Federal lands conveyed.

(h) The Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701), is supplemental to all applicable exchange laws, except the cash equalization provisions of the Sisk Act of December 4, 1967, as amended (16 U.S.C. 484a).

§ 254.2 Definitions.

For the purposes of this subpart, the following terms have the meanings set forth in this section.

Acquisition means the attainment of lands or interests in lands by the Secretary, acting on behalf of the United States, by exchange, purchase, donation, or eminent domain.

Adjustment to relative values means compensation for exchange-related costs, or other responsibilities or requirements assumed by one party, which ordinarily would be borne by the other party. These adjustments do not alter the agreed upon value of the lands involved in an exchange.

Agreement to initiate means a written, nonbinding statement of present intent to initiate and pursue an exchange, which is signed by the parties and which may be amended by consent of the parties or terminated at any time upon written notice by any party.

Appraisal or appraisal report means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of the lands or interests in lands as of a specific date(s), supported by the presentation and analysis of relevant market information.

Approximately equal value means a comparative estimate of value of the lands involved in an exchange which have readily apparent and substantially similar elements of value, such as location, size, use, physical characteristics, and other amenities.

Arbitration is a process to resolve a disagreement among the parties as to appraised value, performed by an arbitrator appointed by the Secretary from a list recommended by the American Arbitration Association.

Assembled land exchange means an exchange of Federal land for a package of multiple ownership parcels of non-Federal land consolidated for purposes of one land exchange transaction.

Authorized officer means a Forest Service line or staff officer who has been delegated the authority and responsibility to make decisions and perform the duties described in this subpart.

Bargaining is a process other than arbitration, by which parties attempt to resolve a dispute concerning the appraised value of the lands involved in an exchange.

Federal lands means any lands or interests in lands, such as mineral and timber interests, that are owned by the United States and administered by the Secretary of Agriculture through the Chief of the Forest Service, without regard to how the United States acquired ownership.

Hazardous substances are those substances designated under Environmental Protection Agency regulations at 40 CFR part 302.

Highest and best use means an appraiser's supported opinion of the most probable and legal use of a property, based on market evidence, as of the date of valuation.

Lands means any land and/or interests in land.

Market value means the most probable price in cash, or terms equivalent to cash, which lands or interest in lands should bring in a competitive and open market under all conditions requisite to a fair sale, where the buyer and seller each acts prudently and knowledgeably, and the price is not affected by undue influence.

Mineral laws means the mining and mineral leasing laws applicable to Federally owned lands and minerals reserved from the public domain for national forest purposes and the Geothermal Steam Act of 1970 (30 U.S.C. 1001 *et seq.*), but not the Materials Act of 1947 (30 U.S.C. 601 *et seq.*).

Outstanding interests are rights or interests in property held by an entity other than a party to an exchange.

Party means the United States or any person, State, or local government who enters into an agreement to initiate an exchange.

Person means any individual, corporation, or other legal entity legally capable to hold title to and convey land. An individual must be a citizen of the United States and a corporation must be subject to the laws of the United States or of the State where the land is located or the corporation is incorporated. No Member of Congress may participate in a land exchange with an agency of the United States, as set forth in 18 U.S.C. 431–433.

Public land laws means that body of non-mineral land laws dealing with the disposal of National Forest System lands administered by the Secretary of Agriculture.

Reserved interest means an interest in real property retained by a party from a conveyance of the title to that property.

Resource values means any of the various commodity values or non-commodity values, such as wildlife habitat and aesthetics, contained within land interests, surface and subsurface.

Secretary means the Secretary of Agriculture or the individual to whom responsibility has been delegated.

Segregation means the removal for a limited period, subject to valid existing rights, of a specified area of the Federal lands from appropriation under the public land laws and mineral laws, pursuant to the authority of the Secretary of the Interior to allow for the orderly administration of the Federal lands.

Statement of value means a written report prepared by a qualified appraiser in conformance with the minimum standards of the Uniform Standards of Professional Appraisal Practice that states the appraiser's conclusion(s) of value.

§ 254.3 Requirements.

(a) *Discretionary nature of exchanges.* The Secretary is not required to exchange any Federal lands. Land exchanges are discretionary, voluntary real estate transactions between the Federal and non-Federal parties. Unless and until the parties enter into a binding exchange agreement, any party may withdraw from and terminate an exchange proposal at any time during the exchange process.

(b) *Determination of public interest.* The authorized officer may complete an exchange only after a determination is made that the public interest will be well served.

(1) *Factors to consider.* When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands and resources, to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: protection of fish and wildlife habitats, cultural resources, watersheds, and wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split estates; expansion of communities; accommodation of existing or planned land use authorizations (§ 254.4(c)(4); promotion of multiple-use values; implementation of applicable Forest Land and Resource Management Plans; and fulfillment of public needs.

(2) *Findings.* To determine that an exchange well serves the public interest, the authorized officer must find that—

(i) The resource values and the public objectives served by the non-Federal lands or interests to be acquired must equal or exceed the resource values and the public objectives served by the Federal lands to be conveyed, and

(ii) The intended use of the conveyed Federal land will not substantially conflict with established management objectives on adjacent Federal lands, including Indian Trust lands.

(3) *Documentation.* The findings and the supporting rationale shall be documented and made part of the administrative record.

(c) *Equal value exchanges.* Except as provided in § 254.11 of this subpart, lands or interests to be exchanged must be of equal value or equalized in accordance with the methods set forth in § 254.12 of this subpart. An exchange of lands or interests shall be based on market value as determined by the Secretary through appraisal(s), through bargaining based on appraisal(s), through other acceptable and commonly recognized methods of determining market value, or through arbitration.

(d) *Same-State exchanges.* Unless otherwise provided by statute, the Federal and non-Federal lands involved in an exchange must be located within the same State.

(e) *Congressional designations.* Upon acceptance of title by the United States, lands acquired by the Secretary of the Interior by exchange under the authority granted by the Federal Land Policy and Management Act of 1976, as amended, which are within the boundaries of any unit of the National Forest System, the National Wild and Scenic Rivers System, the National Trails System, the National Wilderness Preservation System, or any other system established by Act of Congress; or the boundaries of any national conservation area or national recreation area established by Act of Congress, immediately are reserved for and become a part of the unit or area in which they are located, without further action by the Secretary of the Interior, and, thereafter, shall be managed in accordance with all laws, rules, regulations, and land resource management plans applicable to such unit or area.

(f) *Land and resource management planning.* The authorized officer shall consider only those exchange proposals that are consistent with land and resource management plans (36 CFR part 219). Lands acquired by exchange that are located within areas having an administrative designation established through the land management planning process shall automatically become part of the area within which they are located, without further action by the Forest Service, and shall be managed in accordance with the laws, rules, regulations, and land and resource management plan applicable to such area.

(g) *Environmental analysis.* After an agreement to initiate an exchange is signed, the authorized officer shall undertake an environmental analysis in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4371), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and Forest Service environmental policies and procedures (Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15). In making this analysis, the authorized officer shall consider timely written comments received in response to the exchange notice published pursuant to § 254.8 of this subpart.

(h) *Reservations or restrictions in the public interest.* In any exchange, the authorized officer shall reserve such rights or retain such interests as are needed to protect the public interest or shall otherwise restrict the use of Federal lands to be exchanged, as appropriate. The use or development of lands conveyed out of Federal ownership are subject to any restrictions imposed by the conveyance documents and all laws, regulations, and zoning authorities of State and local governing bodies.

(i) *Hazardous substances.*

(1) *Federal lands.* The authorized officer shall determine whether hazardous substances are known to be present on the Federal lands involved in the exchange and shall provide notice of known storage, release, or disposal of hazardous substances on the Federal lands in the contract agreement and in the conveyance document, pursuant to 40 CFR part 373 and 42 U.S.C. 9620. For purposes of this section, the notice of hazardous substances on involved Federal lands in an agreement to initiate an exchange or an exchange agreement meets the requirements for notices established in 40 CFR part 373. Unless the non-Federal party is a potentially responsible party under 42 U.S.C. 9607(a) and participated as an owner, or in the operation, arrangement, generation, or transportation of the hazardous substances found on the Federal land, the conveyance document from the United States must contain a covenant warranting that all remedial action necessary to protect human health and the environment with respect to any such substances remaining on the property has been taken before the date of transfer and that any additional remedial action found necessary after the transfer shall be conducted by the United States, pursuant to 42 U.S.C. 9620(h)(3). The conveyance document must also reserve to the United States the right of access to the conveyed property if remedial or corrective action is required after the date of transfer. Where the non-Federal party is a potentially responsible party with respect to the property, it may be appropriate to enter into an agreement as referenced in 42 U.S.C. 9607(e) whereby that party would indemnify the United States and hold the United States harmless against any loss or cleanup costs after conveyance.

(2) *Non-Federal lands.* The non-Federal party shall notify the authorized officer of any hazardous substances known to have been released, stored, or disposed of on the non-Federal land, pursuant to § 254.4 of this subpart. Notwithstanding such notice, the authorized officer shall determine whether hazardous substances are known to be present on the non-Federal land involved in an exchange. If hazardous substances are known or believed to be present on the non-Federal land, the authorized officer shall reach an agreement with the non-Federal party regarding the responsibility for appropriate response action concerning the hazardous substances before completing the exchange. The terms of this agreement and any appropriate "hold harmless agreement" shall be included in an exchange agreement, pursuant to § 254.14 of this subpart.

(j) *Legal description of properties.* All lands subject to an exchange must be properly described on the basis of either a survey executed in accordance with the Public Land Survey System laws and standards of the United States or, if those laws and standards cannot be applied, the lands shall be properly described and clearly locatable by other means as may be prescribed or allowed by law.

(k) *Special review.* Except as provided in this paragraph, land acquisitions of $150,000 or more in value made under the authority of the Weeks Act of March 1, 1911, as amended (16 U.S.C. 516), must be submitted to Congress for oversight review, pursuant to the Act of October 22, 1976, as amended (16 U.S.C. 521b). However, minor and insignificant changes in land acquisition proposals need not be resubmitted for congressional oversight, provided the general concept of and basis for the acquisition remain the same.

§ 254.4 Agreement to initiate an exchange.

(a) Exchanges may be proposed by the Forest Service or by any person, State, or local government. Initial exchange proposals should be directed to the authorized officer responsible for the management of Federal lands proposed for exchange.

(b) To assess the feasibility of an exchange proposal, the prospective parties may agree to obtain a preliminary estimate of the values of the lands involved in the proposal. A qualified appraiser must prepare the preliminary estimate.

(c) If the authorized officer agrees to proceed with an exchange proposal, all prospective parties shall execute a nonbinding agreement to initiate an exchange. At a minimum, the agreement must include:

(1) The identity of the parties involved in the proposed exchange and the status of their ownership or ability to provide title to the land;

(2) A description of the lands or interest in lands being considered for exchange;

(3) A statement by a party, other than the United States and State and local governments, that such party is a citizen

of the United States or a corporation or other legal entity subject to the laws of the United States or a State thereof;

(4) A description of the appurtenant rights proposed to be exchanged or reserved; any authorized uses, including grants, permits, easements, or leases; and any known unauthorized uses, outstanding interests, exceptions, covenants, restrictions, title defects or encumbrances;

(5) A time schedule for completing the proposed exchange;

(6) An assignment of responsibility for performance of required functions and for costs associated with processing the exchange;

(7) A statement specifying whether compensation for costs assumed will be allowed pursuant to the provisions of § 254.7 of this subpart;

(8) Notice of any known release, storage, or disposal of hazardous substances on involved Federal or non-Federal lands and any commitments regarding responsibility for removal or other remedial actions concerning such substances on involved non-Federal lands (§ 254.3(i) and § 254.14);

(9) A grant of permission by each party to physically examine the lands offered by the other party;

(10) The terms of any assembled land exchange arrangement, pursuant to § 254.5 of this subpart;

(11) A statement as to the arrangements for relocation of any tenants occupying non-Federal lands pursuant to § 254.15 of this subpart;

(12) A notice to an owner-occupant of the voluntary basis for the acquisition of the non-Federal lands, pursuant to § 254.15 of this subpart; and

(13) A statement as to the manner in which documents of conveyance will be exchanged, should the exchange proposal be successfully completed.

(d) Unless the parties agree to some other schedule, no later than 90 days from the date of the executed agreement to initiate an exchange, the parties shall arrange for appraisals which are to be completed within timeframes and under such terms as are negotiated. In the absence of current market information reliably supporting value, the parties may agree to use other acceptable and commonly recognized methods to estimate value.

(e) An agreement to initiate may be amended by consent of the parties or terminated at any time upon written notice by any party.

(f) Entering into an agreement to initiate an exchange does not legally bind any party to proceed with processing or to consummate a proposed exchange, or to reimburse or pay damages to any party to a proposed exchange that is not consummated or to anyone doing business with any such party.

(g) The withdrawal from an exchange proposal by an authorized officer at any time prior to the notice of decision, pursuant to § 254.13 of this subpart, is not appealable under 36 CFR part 217 or 36 CFR part 251, subpart C.

§ 254.5 Assembled land exchanges.

(a) Whenever the authorized officer determines it is to be practicable, an assembled land exchange arrangement may be used to facilitate exchanges and reduce costs.

(b) The parties to an exchange may agree to such an arrangement where multiple ownership parcels of non-Federal lands are consolidated into a package for the purpose of completing one exchange transaction.

(c) An assembled land exchange arrangement must be documented in the agreement to initiate an exchange, pursuant to § 254.4 of this subpart.

(d) Value of the Federal and non-Federal lands involved in an assembled land exchange arrangement shall be estimated pursuant to § 254.9 of this subpart.

§ 254.6 Segregative effect.

(a) If a proposal is made to exchange Federal lands, the authorized officer may request the appropriate State Office of the Bureau of Management (BLM) to segregate the Federal lands by a notation on the public land records. Subject to valid existing rights, the Federal lands shall be segregated from appropriation under the public land laws and mineral laws for a period not to exceed 5 years from the date of record notation.

(b) Any interests of the United States in the non-Federal lands that are covered by the exchange proposal may be noted and segregated from appropriation under the mineral laws for a period not to exceed 5 years from the date of notation.

(c) The segregative effect terminates as follows:

(1) Automatically, upon issuance of a patent or other document of conveyance to the affected lands;

(2) On the date and time specified in an opening order, published in the Federal Register by the appropriate BLM State Office, if a decision is made not to proceed with the exchange or upon removal of any lands from the exchange proposal; or

(3) Automatically, at the end of the segregation period not to exceed 5 years from the date of notation on the public land records, whichever occurs first.

§ 254.7 Assumption of costs.

(a) Generally, each party to an exchange will bear their own costs of the exchange. However, if the authorized officer finds it is in the public interest as specified in paragraph (b) of this section, an agreement to initiate an exchange may provide that:

(1) One or more of the parties may assume, without compensation, all or part of the costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties; or

(2) Subject to the limitation in paragraph (c) of this section, the parties may agree to make adjustments to the relative values involved in an exchange transaction, in order to compensate parties for assuming costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties. These costs or services may include but are not limited to: land surveys; appraisals; mineral examinations; timber cruises; title searches; title curative actions; cultural resource surveys and mitigation; hazardous substance surveys and controls; removal of encumbrances; arbitration, including all fees; bargaining; cure of deficiencies preventing highest and best use of the land; conduct of public hearings; assemblage of non-Federal parties from multiple ownerships; and the expenses of complying with laws, regulations, and policies applicable to exchange transactions, or which are necessary to bring the Federal and non-Federal lands involved in the exchange to their highest and best use for appraisal and exchange purposes.

(b) As a condition of an agreement to initiate, the authorized officer may agree to assume without compensation costs ordinarily borne by the non-Federal party or to compensate the non-Federal party for assuming Federal costs only on an exceptional basis when it is clearly in the public interest and when the authorized officer determines and documents that each of the following circumstances exist:

(1) The amount of such cost assumed or compensation is reasonable and accurately reflects the value of the cost or service provided, or any responsibility and requirement assumed;

(2) The proposed exchange is a high priority of the agency;

(3) The land exchange must be expedited to protect important Federal resource values, such as congressionally designated areas or endangered species habitat;

(4) Cash equalization funds are available for compensation of the non-Federal party; and

(5) There are no other practicable means available to the authorized officer for meeting Federal exchange processing costs, responsibilities, or requirements.

(c) The total amount of an adjustment agreed to as compensation for costs pursuant to this section shall not exceed the limitations set forth in § 254.12(b) of this subpart.

§ 254.8 Notice of exchange proposal.

(a) Upon entering into an agreement to initiate an exchange, the authorized officer shall publish a notice once a week for four consecutive weeks in newspapers of general circulation in the counties in which the Federal and non-Federal lands or interests proposed for exchange are located. The authorized officer shall notify authorized users, the jurisdictional State and local governments, and the congressional delegation and shall make other distribution of the notice as appropriate. At a minimum, the notice shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A description of the Federal and non-Federal lands being considered for exchange;

(3) A statement as to the effect of segregation from appropriation under the public land laws and mineral laws, if applicable;

(4) An invitation to the public to submit in writing any comments on or concerns about the exchange proposal, including advising the agency as to any liens, encumbrances, or other claims relating to the lands being considered for exchange; and

(5) The deadline by which comments must be received, and the name, title, and address of the official to whom comments must be sent and from whom additional information may be obtained.

(b) To be assured of consideration in the environmental analysis of the proposed exchange, all comments must be made in writing to the authorized officer and postmarked or delivered within 45 days after the initial date of publication.

(c) The authorized officer is not required to republish legal descriptions of any lands that may be excluded from the final exchange transaction, provided such lands were identified in the notice of exchange proposal. In addition, minor corrections of land descriptions and other insignificant changes do not require republication.

§ 254.9 Appraisals.

The Federal and non-Federal parties to an exchange shall comply with the appraisal standards as set forth in paragraphs (a) through (d) of this section, and, to the extent appropriate, with the Uniform Appraisal Standards for Federal Land Acquisitions: Interagency Land Acquisition Conference 1992 (Washington, DC, 1992), ISBN 0–16–038050–2 when appraising the values of the Federal and non-Federal lands involved in an exchange.

(a) *Appraiser qualifications.*

(1) A qualified appraiser(s) shall provide to the authorized officer appraisals estimating the market value of Federal and non-Federal properties involved in an exchange. A qualified appraiser may be an employee or a contractor to the Federal or non-Federal exchange parties. At a minimum, a qualified appraiser shall be an individual agreeable to all parties and approved by the authorized officer, who is competent, reputable, impartial, and has training and experience in appraising property similar to the property involved in the appraisal assignment.

(2) Qualified appraisers shall possess qualifications consistent with State regulatory requirements that meet the intent of Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331). In the event a State or Territory does not have approved policies, practices, and procedures regulating the activities of appraisers, the Forest Service may establish appraiser qualification standards commensurate with those generally adopted by other States or Territories meeting the requirements of FIRREA.

(b) *Market value.*

(1) In estimating market value, the appraiser shall:

(i) Determine the highest and best use of the property to be appraised;

(ii) Estimate the value of the lands and interests as if in private ownership and available for sale in the open market;

(iii) Include historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities as reflected in prices paid for similar properties in the competitive market;

(iv) Consider the contributory value of any interest in land such as water rights, minerals, or timber, to the extent they are consistent with the highest and best use of the property; and

(v) If stipulated in the agreement to initiate in accordance with § 254.4 of this subpart, estimate separately the value of each property optioned or acquired from multiple ownerships by the non-Federal party for purposes of exchange, pursuant to § 254.5 of this subpart. In this case, the appraiser also must estimate the value of the Federal and non-Federal properties in a similar manner.

(2) In estimating market value, the appraiser may not independently add the separate values of the fractional interests to be conveyed, unless market evidence indicates the following:

(i) The various interests contribute their full value (pro rata) to the value of the whole; and

(ii) The valuation is compatible with the highest and best use of the property.

(3) In the absence of current market information reliably supporting value, the authorized officer may use other acceptable and commonly recognized methods to determine market value.

(c) *Appraisal report standards.* Appraisals prepared for exchange purposes must contain the following minimum information:

(1) A summary of facts and conclusions;

(2) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal assignment, if any;

(3) An explanation of the extent of the appraiser's research and actions taken to collect and confirm information relied upon in estimating value;

(4) An adequate description of the physical characteristics of the land being appraised; a statement of all encumbrances; title information; location, zoning, and present use; an analysis of highest and best use; and at least a 5-year sales history of the property;

(5) A disclosure of any condition that is observed during the inspection of the property or becomes known to the appraiser through the normal research which would lead the appraiser to believe that hazardous substances may be present on the property being appraised;

(6) A comparative market analysis and, if more than one method of valuation is used, an analysis and reconciliation of the methods used to support the appraiser's estimate of value;

(7) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, effect of any favorable financing on sale price, and verification by a party involved in the transaction;

(8) An estimate of market value;

(9) The effective date of valuation, date of appraisal, signature, and certification of the appraiser;

(10) A certification by the appraiser to the following:

(i) The appraiser has personally contacted the property owner or designated representative and offered the owner an opportunity to be present during inspection of the property;

(ii) The appraiser has personally examined the subject property and all comparable sale properties relied upon in the report;

(iii) The appraiser has no present or prospective interest in the appraised property; and

(iv) The appraiser has not received compensation that was contingent on the analysis, opinions, or conclusions contained in the appraisal report; and

(11) Copies of relevant written reports, studies, or summary conclusions prepared by others in association with the appraisal assignment which were relied upon by the appraiser to estimate value, which may include, but is not limited to, current title reports, mineral reports, or timber cruises prepared by qualified specialists.

(d) *Appraisal review.*

(1) Appraisal reports shall be reviewed by a qualified review appraiser meeting the qualifications set forth in paragraph (a) of this section. Statements of value prepared by agency appraisers are not subject to this review.

(2) The review appraiser shall determine whether the appraisal report:

(i) Is complete, logical, consistent, and supported by market analysis;

(ii) Complies with the standards prescribed in paragraph (c) of this section; and

(iii) Reasonably estimates the probable market value of the lands appraised.

(3) The review appraiser shall prepare a written review report, containing at a minimum:

(i) A description of the review process used;

(ii) An explanation of the adequacy, relevance, and reasonableness of the data and methods used by the appraiser to estimate value;

(iii) The review appraiser's conclusions regarding the appraiser's estimate of market value; and

(iv) A certification by the review appraiser to the following:

(A) The review appraiser has no present or prospective interest in the property which is the subject of the review report; and

(B) The review appraiser has not received compensation that was contingent upon approval of the appraisal report.

§ 254.10 Bargaining; arbitration.

(a) Unless the parties to an exchange agree in writing to suspend or modify the deadlines contained in paragraphs (a)(1) through (a)(4) of this section, the parties shall adhere to the following:

(1)(i) Within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange may agree on the appraised values or may initiate a process of bargaining or some other process to determine values. Bargaining or any other process must be based on an objective analysis of the valuation in the appraisal report(s) and is a means of reconciling differences in such report(s). Bargaining or another process to determine values may involve one or more of the following actions:

(A) Submission of the disputed appraisal(s) to another qualified appraiser for review:

(B) Request for additional appraisals;

(C) Involvement of an impartial third party to facilitate resolution of the value disputes, or

(D) Use of some other acceptable and commonly recognized practice for resolving value disputes.

(ii) Any agreement based upon bargaining must be in writing and made part of the administrative record of the exchange. Such agreement must contain a reference to all relevant appraisal information and state how the parties reconciled or compromised appraisal information to arrive at an agreement based on market value.

(2) If within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange cannot agree on values but wish to continue with the land exchange, the appraisal(s), at the initiative of either party, must be submitted to arbitration, unless, in lieu of arbitration, the parties have employed a process of bargaining or some other process to determine values. If arbitration occurs, it must be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. The Secretary or an official to whom such authority has been delegated shall appoint an arbitrator from a list provided by the American Arbitration Association.

(3) Within 30 days after completion of arbitration, the parties involved in the exchange must determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or withdraw from the exchange. A decision to withdraw from the exchange may be made upon written notice by either party at this time or at any other time prior to entering into a binding exchange agreement.

(4) If the parties agree to proceed with an exchange after arbitration, the values established by arbitration are binding upon all parties for a period not to exceed 2 years from the date of the arbitration decision.

(b) Arbitration is limited to the disputed valuation of the lands involved in a proposed exchange and an arbitrator's award decision is limited to the value estimate(s) of the contested appraisal(s). An arbitrator may not include in an award decision recommendations regarding the terms of a proposed exchange, nor may an arbitrator's award decision infringe upon the authority of the Secretary to make all decisions regarding management of Federal lands and to make public interest determinations.

§ 254.11 Exchanges at approximately equal value.

(a) The authorized officer may exchange lands which are of approximately equal value upon a determination that:

(1) The exchange is in the public interest and the consummation of the proposed exchange will be expedited;

(2) The value of the lands to be conveyed out of Federal ownership is not more than $150,000 as based upon a statement of value prepared by a qualified appraiser and accepted by an authorized officer;

(3) The Federal and non-Federal lands are substantially similar in location, acreage, use, and physical attributes; and

(4) There are no significant elements of value requiring complex analysis.

(b) The authorized officer, not the non-Federal party, determines whether the Federal and non-Federal lands are approximately equal in value and must document how the determination was made.

§ 254.12 Value equalization; cash equalization waiver.

(a) To equalize the agreed upon values of the Federal and non-Federal lands involved in an exchange, either with or without adjustments of relative values as compensation for various costs, the parties to an exchange may agree to:

(1) Modify the exchange proposal by adding or excluding lands; and/or

(2) Use cash equalization, after making all reasonable efforts to equalize values by adding or deleting lands.

(b) The combined amount of any cash equalization payment and/or the amount of adjustments agreed to as compensation for costs under § 254.7 of this subpart may not exceed 25 percent

of the value of the Federal lands to be conveyed.

(c) The Secretary of Agriculture may not waive cash equalization payment due the United States, but the parties may agree to waive cash equalization payment due the non-Federal party. The amount to be waived may not exceed 3 percent of the value of the lands being exchanged out of Federal ownership or $15,000, whichever is less.

(d) A cash equalization payment may be waived only after the authorized officer certifies, in writing, that the waiver will expedite the exchange and that the public interest will be best served by the waiver.

§ 254.13 Approval of exchanges; notice of decision.

(a) Upon completion of all environmental analyses and appropriate documentation, appraisals, and all other supporting studies and requirements to determine if a proposed exchange is in the public interest and in compliance with applicable law and regulations, the authorized officer shall decide whether to approve an exchange proposal.

(1) When a decision to approve or disapprove an exchange is made, the authorized officer shall publish a notice of the availability of the decision in newspapers of general circulation. At a minimum, the notice must include:

(i) The date of decision,

(ii) A concise description of the decision;

(iii) The name and title of the deciding official;

(iv) Directions for obtaining a copy of the decision; and

(v) The date of the beginning of the appeal period.

(2) The authorized officer shall distribute notices to the State and local governmental subdivisions having authority in the geographical area within which the lands covered by the notice are located, the non-Federal exchange parties, authorized users of involved Federal lands, the congressional delegation, and individuals who requested notification or filed written objections, and others as appropriate.

(b) For a period of 45 days after the date of publication of a notice of the availability of a decision to approve or disapprove an exchange proposal, the decision shall be subject to appeal as provided under 36 CFR part 217 or, for eligible parties, under 36 CFR part 251, subpart C.

§ 254.14 Exchange agreement.

(a) The parties to a proposed exchange may enter into an exchange agreement subsequent to a decision by the authorized officer to approve the exchange, pursuant to § 254.13 of this subpart. Such an agreement is required if hazardous substances are present on the non-Federal lands. An exchange agreement must contain the following:

(1) Identification of the parties, description of the lands and interests to be exchanged, identification of all reserved and outstanding interests, stipulation of any necessary cash equalization, and all other terms and conditions necessary to complete an exchange;

(2) Inclusion of the terms regarding responsibility for removal, indemnification ("hold harmless" agreement), or other remedial actions concerning any hazardous substances on the involved non-Federal lands; and

(3) The agreed upon values of the involved lands, until consummation of the land exchange.

(b) An exchange agreement, as described in paragraph (a) of this section, is legally binding on all parties, subject to the terms and conditions thereof, provided.

(1) Acceptable title can be conveyed;

(2) No substantial loss or damage occurs to either property from any cause;

(3) No undisclosed hazardous substances are found on the involved Federal or non-Federal lands prior to conveyance;

(4) The exchange proposal receives any required Secretarial approval;

(5) No objections are raised during any required congressional oversight;

(6) In the event of an appeal under 36 CFR part 217 or 36 CFR part 251, subpart C, a decision to approve an exchange proposal pursuant to § 254.13 of this subpart is upheld; and

(7) The agreement is not terminated by mutual consent or upon such terms as may be provided in the agreement.

(c) In the event of a failure to perform or to comply with the terms of an exchange agreement, the noncomplying party is liable for all costs borne by the other party as a result of the proposed exchange, including, but not limited to, land surveys, appraisals, mineral examinations, timber cruises, title searches, title curative actions, cultural resource surveys and mitigation, hazardous substance surveys and controls, removal of encumbrances, arbitration, curing deficiencies preventing highest and best use of the land, and any other expenses incurred in processing the proposed land exchange.

(d) Absent an executed exchange agreement, an action taken by the parties prior to consummation of an exchange does not create any contractual or other binding obligations or rights enforceable against any party.

§ 254.15 Title standards.

(a) *Title evidence.*

(1) Unless otherwise specified by the USDA Office of the General Counsel, evidence of title for the non-Federal lands being conveyed to the United States must be in recordable form and in conformance with the Department of Justice regulations and "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" in effect at the time of conveyance.

(2) The United States is not required to furnish title evidence for the Federal lands being exchanged.

(b) *Conveyance documents.*

(1) Unless otherwise specified by the USDA Office of the General Counsel, all conveyances to the United States must be prepared, executed, and acknowledged in accordance with the Department of Justice regulations and "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" in effect at the time of conveyance.

(2) Conveyances of lands from the United States are made by patent, quitclaim deed, or deed and without express or implied warranties, except as to hazardous substances pursuant to § 254.3 of this subpart.

(c) *Title encumbrances.*

(1) *Non-Federal lands.*

(i) Title to the non-Federal lands must be acceptable to the United States. For example, encumbrances such as taxes, judgment liens, mortgages, and other objections or title defects shall be eliminated, released, or waived in accordance with requirements of the preliminary title opinion of the USDA Office of the General Counsel or the Department of Justice, as appropriate.

(ii) The United States shall not accept lands in which there are reserved or outstanding interests that would interfere with the use and management of the land by the United States or would otherwise be inconsistent with the authority under which, or the purpose for which, the lands are to be acquired. Reserved interests of the non-Federal landowner are subject to the appropriate rules and regulations of the Secretary, except upon special finding by the Chief, Forest Service in the case of States, agencies, or political subdivisions thereof (36 CFR part 251, subpart A).

(iii) Any personal property owned by the non-Federal party which is not a part of the exchange proposal, should be removed by the non-Federal party prior to acceptance of title by the United States, unless the authorized officer and

the non-Federal party to the exchange previously agree upon a specified period to remove the personal property. If the personal property is not removed prior to acceptance of title or within the otherwise prescribed time, it shall be deemed abandoned and shall become vested in the United States.

(iv) The exchange parties must reach agreement on the arrangements for the relocation of any tenants. Qualified tenants occupying non-Federal lands affected by a land exchange may be entitled to relocation benefits under 49 CFR 24.2. Unless otherwise provided by law or regulation (49 CFR 24.101(a)(1)), relocation benefits are not applicable to owner-occupants involved in exchanges with the United States provided the owner-occupants are notified in writing that the non-Federal lands are being acquired by the United States on a voluntary basis.

(2) *Federal lands.* If Federal lands proposed for exchange are occupied under grant, permit, easement, or non-mineral lease by a third party who is not a party to the exchange, the third party holder of such authorization and the non-Federal party to the exchange may reach agreement as to the disposition of the existing use(s) authorized under the terms of the grant, permit, easement, or lease. The non-Federal exchange party shall submit documented proof of such agreement prior to issuance of a decision to approve the land exchange, as instructed by the authorized officer. If an agreement cannot be reached, the authorized officer shall consider other alternatives to accommodate the authorized use or shall determine whether the public interest will be best served by terminating such use pursuant to 36 CFR 251.60.

§ 254.16 Case closing.

(a) *Title transfers.* Unless otherwise agreed, and notwithstanding the decision in *United States* v. *Schurz*, 102 U.S. 378 (1880), or any other law or ruling to the contrary, title to both the non-Federal and Federal lands pass simultaneously and are deemed accepted by the United States and the non-Federal landowner, respectively, when the documents of conveyance are recorded in the county clerk's or other local recorder's office. Before recordation, all instructions, requirements, and conditions set forth by the United States and the non-Federal landowner must be met. The minimum requirements and conditions necessary for recordation include the following, as appropriate:

(1) The determination by the authorized officer that the United States will receive possession, acceptable to it, of such lands;

(2) The issuance of title evidence as of the date of recordation which conforms to the instructions and requirements of the USDA Office of the General Counsel's preliminary title opinion; and

(3) Continuation searches disclosing no matters of record that would require any change in the aforementioned title evidence as issued.

(b) *Automatic segregation of lands.* Subject to valid existing rights, non-Federal lands acquired through exchange by the United States automatically are segregated from appropriation under the public land laws and mineral laws until midnight of the 90th day after acceptance of title by the United States, and the public land records must be noted accordingly. Thereafter, the lands will be open automatically to operation of the public land laws and mineral laws, except to the extent otherwise provided by law, unless action is taken pursuant to 43 CFR part 2300 to initiate a withdrawal within the 90-day period.

§ 254.17 Information requirements.

The requirements governing the preparation of an agreement to initiate in § 254.4 of this subpart and an exchange agreement in § 254.4 of this subpart constitute information requirements as defined by the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and have been approved for use pursuant to 5 CFR part 1320 and assigned OMB Control Number 0596–0105.

Dated: February 18, 1994.

Adela Backiel,

Deputy Assistant Secretary, Natural Resources and Environment.

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Part III

Department of Housing and Urban Development

Office of Assistant Secretary

24 CFR Parts 905 and 968
Public and Indian Housing Amendments to the Comprehensive Grant Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 968

[Docket No. R–94–1700; FR–3517–P–01]

RIN 2577–AB32

Public and Indian Housing Amendments to the Comprehensive Grant Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes amendments to existing regulations to simplify and expedite the Comprehensive Grant Program (CGP) planning and funding process for public housing agencies (PHAs) and Indian housing authorities (IHAs) that own or operate 250 or more public or Indian housing units.

DATES: Comments due date: April 22, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. to 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For questions concerning public housing agencies contact Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Public and Indian Housing, room 4138, telephone (202) 708–1800, or (202) 708–0850 (voice/TDD).

For questions concerning Indian housing authorities contact Dominic Nessi, Director, Office of Native American Programs, Public and Indian Housing, room 4140, telephone (202) 708–1015, or (202) 708–0850.

The address for all the above-listed persons is: Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (The telephone numbers listed above are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget, under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0157.

II. Background

Section 14 of the United States Housing Act of 1937 (42 U.S.C. 14371) ("the Act"), as amended by section 119 of the Housing and Community Development Act of 1987 (the "1987 Act") and Cranston-Gonzalez National Affordable Housing Act of 1990 ("NAHA"), established the Comprehensive Grant Program (CGP), which was designed to govern the modernization needs of PHAs and IHAs that own and operate 250 or more public or Indian housing units. PHAs and IHAs that own and operate fewer than 250 public or Indian housing units are governed by the Comprehensive Improvement Assistance Program (CIAP).

(The reader should note that, hereafter, for ease of discussion, the preamble to this proposed rule uses the terms "public housing" to refer to both public and Indian housing, and "HAs" or "housing agency," to refer to both PHAs and IHAs, unless otherwise stated. In addition, the term "development" is used to refer to "low-income projects," as defined at section 3(b)(1) of the Act.)

The Department promulgated regulations for the CGP and CIAP at 24 CFR parts 905 and 968, and these regulations have governed the modernization of public and Indian housing assisted under the Act. On February 14, 1992, the Department published the final rule for the CGP at 57 FR 5514. The February 14, 1992 rule amended the CIAP at 24 CFR part 968, subpart B, to limit its applicability to HAs that own or operate fewer than 500 public housing units (fewer than 250 units beginning in Federal Fiscal Year (FFY) 1993); added a new subpart C to part 968, which sets forth the new CGP for HAs that own or operate a total of 500 or more public housing units (250 or more units beginning in FFY 1993); and revised both the CIAP and CGP programs for purposes of implementing various technical and substantive program amendments contained in sections 509 (b) through (f) of the NAHA.

On March 15, 1993, the Department published an interim rule for CIAP at 58 FR 13916 for HAs with less than 250 units in FFY 1993 and minor technical corrections for CGP. The CIAP interim rule was published in response to public comment requesting both streamlining and simplification and was also based on experience gained through program review/audit and monitoring.

III. Simplification of CGP

A. Administrative Actions

The primary goal for CGP is to provide greater discretion and responsibility to HAs in carrying out their modernization programs, thereby returning it to local control. The published CGP rule and the CGP Handbook 7485.3 were designed to meet this objective. Following their publication, the Department has explored additional measures to simplify the program and to increase the flexibility, responsibility and authority at the HA level beyond that provided for in the regulation and Handbook. It is the Department's intent that this be an on-going process that will result in simplifying the program and providing maximum flexibility to HAs. It is expected that this increased flexibility to HAs will foster increased accountability by the HAs to residents and the local government thereby ensuring local control of the program. HAs will then demonstrate this local control and involvement with their submission of materials for the partnership process.

Additionally, the Department is concerned about the need to accelerate the obligation of CGP funds. In order to contribute to the economic recovery of this Nation, the Secretary has established, as an initiative, the acceleration of the obligation and expenditure of CGP funds.

Unless there are very substantial reasons to the contrary (including but not limited to litigation, strikes, necessity to redesign work already bid, and toxic substances), HUD expects that CIAP/CGP funds will be obligated within two years of receipt (*i.e.*, within two years from the execution of the ACC amendment) and expended in three years from the execution of the ACC amendment. Some HAs have suggested that the timeframe for tracking an HA's obligation/expenditure of funds should begin with the date the HA has access to LOCCS/VRS (Line of Credit Control System/Voice Response System). HUD has made provisions for fast tracking the ACC execution and Field Offices are advised to put the required information into LOCCS/VRS as soon as the documents are executed.

HUD has attempted to streamline the ACC amendment process. As noted in

notice PIH 93–10 (entitled Expediting Fiscal Year (FY) 1993 Comprehensive Grant Program (CGP) Funding for Public and Indian Housing Authorities (HA) that had an Approved Comprehensive Plan in FY 1992), issued March 10, 1993, the ACC amendment is prepared by the HUD Field Office program staff, reviewed by the HUD Field Counsel and forwarded to the HA for signature. Unless required by State or local law or the HA by-laws, the Executive Director is permitted to sign and return the ACC amendment without a Board Resolution. HAs are encouraged to consider amending their by-laws (where permitted under law) so that a Board Resolution is not required or, if a Board Meeting is not imminent, the HA may consider conducting a telephone Board Meeting to authorize the signing of the ACC amendment.

HAs are also required to execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which HAs are obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. HUD is proposing to eliminate the requirement for Declarations of Trust for Mutual Help units. Because of the nature of the Mutual Help program (homeownership) and the burden which this requirement places on Field Counsel and IHAs (e.g., locating legal descriptions or surveys for trust land when the IHA's and HUD's interest is only a leasehold), HUD has reviewed and discussed this issue with Field Counsel and finds that HUD's interest is sufficiently protected without the further requirement of a Declaration of Trust.

HUD is also aware of several problems which HAs have encountered during the first year of operation of LOCCS/VRS and will meet with HAs and industry groups to work out any remaining problems with LOCCS/VRS. Currently, LOCCS/VRS is not set up to accommodate fungibility between budget line items. Modifications will be made to the LOCCS/VRS software to allow fungibility.

The HA estimated time frames (target dates) for obligation and expenditures are reflected in its implementation schedule. The Department proposes in this rule at 24 CFR 905.669(d) and 24 CFR 968.315(d) that all formula funding should be obligated within two years of allocation unless a longer period is originally approved by HUD. HAs may self-execute a time extension because of HUD delay or for other reasons outside of the HA's control. The time periods for obligation and expenditure of modernization funds are also proposed to be taken into account in HUD's determination of an HA's continuing capacity and reasonable progress. See §§ 905.687 and 968.345.

If the HA fails to obligate funds within this period, they may be subject to an alternative management strategy which may involve third-party oversight of the modernization function. Before HUD would invoke this remedy, HUD would provide technical assistance to the HA and work with the HA to correct deficiencies. Furthermore, HUD would only require such action after a corrective action order had been issued and the HA failed to comply with the order. HUD could then issue a corrective action order for an alternative management strategy. The HA may appeal in writing the corrective action order imposing an alternative management strategy within 60 days of that decision. HUD Headquarters shall render a written decision on an HA's appeal within 60 calendar days of the date of its receipt of the HA's appeal.

HUD's role in expediting the allocation of modernization funds is to reduce its time for review and approval of the CGP annual submission. This will enable HAs to have funding earlier in the FFY. HUD issued its first guidance on expedited review and submission on February 4, 1993 in Notice PIH 93–5 which was provided to HAs. The notice also indicated that HUD would be developing additional time saving measures. The notice provided for accelerated submission by HAs in advance of originally established dates and accelerated review and approval by HUD of the documents required for FFY 1993 CGP funding. Notwithstanding the statutory 75-day review period, HUD would review and approve documents as soon as possible. It was anticipated that this approach would be continued in FY 1994 as part of HUD's ongoing efforts to expedite use of available modernization funds.

The Department issued additional guidance on expediting FFY 1993 CGP funding in notice PIH 93–10, issued March 10, 1993. This Notice provided that if large HAs (with 500 or more units) meet specified criteria, HUD will reduce the time for its review and approval of the FFY 1993 Annual Submission from a maximum of 75 days to 14 days wherever possible. The expedited review by HUD and subsequent prompt signing of the Annual Contribution Contract (ACC) Amendment by the HA would result in HAs having access to FFY 1993 CGP funds two to five months sooner than anticipated. In turn, these funds would be available to HAs to engage in modernization activities that will spur local economies and provide needed improvements for low-income developments.

The basis for the Department's expedited review for large HAs (with 500 or more units) was the HAs' Comprehensive Plan (including the Five-Year Action Plan) which was reviewed and approved by HUD in FFY 1992 and which is the basis of the FFY 1993 Annual Statement.

B. Regulatory Actions

Based on extensive review of CGP regulations and procedures and comments from HAs and their interest groups, it was determined that revisions to the CGP regulations were necessary to further simplify and improve the CGP process so HAs could more readily expedite CGP funding.

To expedite the CGP review and approval process, as well as provide HAs with additional flexibility in implementing the program, changes are needed in the following areas: Fungibility of work-items within the Five-Year Action Plan, notification of formula amounts, timing of meetings with residents and the annual public hearing, and appeals of formula amounts. This section will discuss each of these issues and the specific regulatory amendments. The Department requests comments on these issues and amendments within 45 days. The Department has shortened this time period to ensure that needed changes can be effective as soon as possible while providing an opportunity for notice and comment before these changes become effective.

The major change being proposed in this rule is the concept of full fungibility of work items identified in an HA's Five-Year Action Plan. Full fungibility permits the HA to substitute any work item in the approved Five-Year Action Plan using the current FFY funds, without any further HUD approval. For example, if an HA has proposed kitchens at Development A in the first year of the Plan, and for some reason, the HA cannot do that work item, the HA may substitute roofs at Development B which appears in year four of the Five-Year Action Plan.

Under current rules, HAs have rolling Five-Year Action Plans, but only spend CGP funds for work items in their one or two year Annual Statements. Major changes (*i.e.*, additions, deletions or modifications of work items cumulatively totaling 10 percent or more of a HA's annual grant allocation, excluding emergencies) require prior HUD approval. Any changes with respect to work items cumulatively

totaling less than 10 percent of an HA's annual grant, excluding emergencies, do not require prior HUD approval, so long as the work is covered under the HA's Five-Year Action Plan. See §§ 905.102 and 968.305.

In this proposed rule, HUD intends to continue the rolling base of the Five-Year Action Plan, but allow full fungibility of work items (*i.e.*, interchangeability) in any of the five years. HUD also intends to eliminate the concept of "major change" and major change reviews.

In order to permit full fungibility of work items in the Five-Year Action Plan, the level of detail with regard to the work items must be consistent. Currently, work items are described as major work categories (*e.g.*, kitchens at $100,000) in the out years of the Five-Year Action Plan and in greater detail in the Annual Statement (*e.g.*, kitchen cabinets in 100 units at $75,000 and kitchen floors in 100 units at $25,000). This proposed rule would eliminate the requirement for two separate documents (Annual Statement and Five-Year Action Plan) and incorporate the required information in one document, which is a modified version of the current Five-Year Action Plan and submitted with the Annual Submission. The work to be accomplished in each of the five years will be identified on an individual Work Statement for that year. The work items will be identified as major work categories, and include only quantity and total cost (*e.g.*, 100 kitchens at $100,000). This is more detail than currently required for the out years (quantity) but less than for the current Annual Statement (no detail on individual work items).

Requiring HAs to only describe a major work category with quantity and cost without specifying work items is in keeping with the statutory intent of granting more flexibility to HAs and eases the transition to full five year fungibility Additionally, this approach will ease the level of effort with regard to the HAs' submissions to HUD, and reduce HUD's upfront review of the HAs' proposed activities. However, HAs must plan in detail and maintain documentation in their files to support the work activities proposed. The level of detail in the Five-Year Action Plan for administrative and management improvement costs would have to be sufficient enough for HUD to make a determination of eligibility. For example, only mentioning "training" is insufficient. The HA must describe the training and how it relates to physical improvements or identified management needs. When the HA completes its Performance and Evaluation Report, it will describe the work activities completed in more detail (*e.g.*, the Five-Year Action Plan's description of 100 kitchens totaling $100,000 would be described in the Performance and Evaluation Report as kitchen cabinets—$50,000, kitchen floors—$20,000 and kitchen windows—$30,000). Since the level of detail in the Five-Year Action Plan is such that HUD will not be able to determine if the work that will be performed as a part of the major work category (*e.g.*, kitchens) is an eligible item, HAs would have to repay ineligible costs discovered during review of the Performance and Evaluation Report.

These revised procedures result in a minimal level of detail in the HAs' submission to HUD. The HA should be cognizant that additional detail will be necessary for meaningful local government and resident participation. The Department proposes that HAs simply summarize their progress and uses of previous year funds for resident review in their public notice of advance meeting for residents (no particular format is prescribed and HAs are not required to describe by development or work item). A greater level of detail should be supplied to residents at the advance meetings and public hearings or upon request to enable them to understand the HA's plans or progress on past activities.

It has been suggested by the New York City Housing Authority that they could provide greater detail in all years of the Five-Year Action Plan so that the information would mirror the Performance and Evaluation Report. The Department is concerned that this would be administratively burdensome for all HAs. If an HA wants to submit a Five-Year Action Plan in a different format, a waiver would be needed. Section 14 of the Act does not differentiate between types of submissions to be made by HAs participating in the CGP, irrespective of their size. Nevertheless, HUD believes that larger HAs will be benefitted, along with all other HAs participating in the CGP, as a result of the simplified program submission requirements contained in this proposed rule.

It is the Department's intent that HAs use fungibility in a prudent manner to make changes where necessary. It is anticipated that HAs will plan realistically for a five-year period in consultation with residents and the local government. HUD expects HAs to generally conform their work to items in the current year's Work Statement and to use fungibility only if necessary to substitute items in year one to efficiently and effectively expend its funding. However, fungibility of the work items (not dollars) in the plan should be used by the HA to make necessary changes without further HUD approval so as not to impede HA efforts to timely obligate and expend funds. Fungibility of work items but not dollars means that HAs may move items from one year to another but will receive no increase in funding if they do so. The grant amount for a particular FY is set forth in the ACC amendment and remains unchanged by shifts in work items.

Except for emergencies, the HA must consult with residents to the extent practicable, on significant changes (such as changes in scope of work) or whenever it moves work items within the approved Five-Year Action Plan. The HA must retain documentation of that consultation in its files. The Department requests comments on the level of consultation with residents regarding "significant changes." In this proposed rule, the Department has left this matter to the discretion of the HA. The Department has eliminated the concept of major change wherein the HA must obtain prior HUD approval when changes are made above an established threshold. The Department is requesting comment on the establishment of a threshold based on dollar amount, percentage of grant or type of work involved.

As a result of allowing full fungibility of work items, the following changes have been made:

(1) Eliminate major change reviews (An HA can expend the funds on any work item in the Five-Year Action Plan without HUD approval. If the HA plans to expend funds on a work item that is not in the Five-Year Action Plan, even though it appears in the Physical or Management Needs Assessment, prior HUD approval is required. However, emergency work would not require amendment to the Work Statement for year one, but must be reflected on the year-end Performance and Evaluation Report.);

(2) Require HAs to amend annual work statements to reflect changes resulting from fungibility;

(3) Eliminate the optional two-year Annual Statement;

(4) Require HAs to identify changes in current year Five-Year Action Plan from the previous year Five-Year Action Plan when making annual submissions; and

(5) Require the same level of detail for each year of the Five-Year Action Plan in order to allow full fungibility with the Work Statement for year one of the Five-Year Action Plan (the Work Statement for year one is being substituted for what is currently referred

to in the CGP rule and statute as the Annual Statement).

The Department is proposing to increase the percentage limitation on management improvements from 10 to 20 percent of the annual grant for all HAs. The Department believes that HA needs to provide adequate security, undertake various resident initiatives activities, and sustain completed physical improvements, warrant this increase. However, the Department is interested in knowing from commenters what other management improvement needs are pressing and whether the increased percentage limitation is sufficient or warranted based on HA experience. In addition, the Department strongly encourages that HAs use at least 5% of their management improvement funds to train residents in carrying out activities related to the modernization-funded physical and management improvements. Other eligible items could include coordination of delivery of social services and youth apprenticeship programs directly related to carrying out the modernization work. HAs will not be permitted without prior HUD approval to exceed the 20 percent cost limitation for management improvements in any year unless they are high PHA performers or IHAs that are determined by the Field Office to be high performing. PHAs that have been designated as high performers overall (not only high performers in modernization) by the Public Housing Management Assessment Program (PHMAP) or IHAs determined by the Field Office to be high performing and which have administrative capability under § 905.135 may exceed the cost limitation on management improvements only, without prior HUD approval. See §§ 905.666(m) and 968.310(m). This provision reflects HUD's intent to provide incentives and relief from HUD oversight to HAs that are consistently well-managed. Guidance on determining high performing IHAs will be provided in the revised CGP Handbook. The Department requests suggestions regarding criteria that can be used to determine high performing IHAs.

The Department has retained the 7% limit on administrative costs, but has excluded in-house asbestos testing efforts from the 7% limit. The Department suggests that its position on asbestos should be the same as that for lead-based paint. The proposed regulation has been modified to exclude such in-house testing from the 7% cost limitation. Further, it has been clarified that general administrative costs associated with the administration of Field Office-approved force account work are included in the cost limitations for administrative costs (account 1410). The actual force account labor costs including direct supervision are charged to the appropriate account for the work being performed, e.g., dwelling structures (account 1460). In addition, it should be noted that Field Offices continue to have the authority to permit administrative costs higher than 7% for justifiable reasons such as high administrative costs resulting from a large percentage of force account work. The Department requests comments on the advisability of higher administrative cost caps and examples of where they would be warranted.

HAs currently delay holding annual advance meetings with residents and the public hearing until the presumptive estimate is provided by HUD. This has resulted in delaying the submission of documents required for access to the funding until later into the FFY. This proposed rule would permit the separation of the planning process and the funding process. HAs, residents, local government officials and others may work on the plan early in the fiscal year, preferably in conjunction with other planning related to the operating budget or other activities affecting residents. Planning is to be an ongoing process, and not necessarily a part of the funding cycle process.

To expedite the funding process, the Department will offer HAs the option to hold the required annual advance meeting for residents and the required annual public hearing for the next year's grant using the formula amount for the current FFY as the planning level for the coming year. See §§ 905.672 and 968.320. In recognition of the possibility that funding levels may change, HAs are encouraged to use the last year's level with variations around that level as planning targets (*e.g.*, if last year's funding is 10% more or less, some developments will be rehabilitated, but others will not). This would allow HAs to start the planning process five months earlier (July rather than December) and the reservation and use of FFY 1995 funds could be made earlier in the FFY. At the resident meeting and public hearing, the HA would discuss any changes to the Five-Year Action Plan, including the new fifth year and a discussion of HA progress in prior approved programs. The draft Performance and Evaluation Report should also be discussed at that time if available. HAs would also explain that the funding level shown is not the actual amount for the coming year, but has been used for planning purposes, and that the Five-Year Action Plan will be adjusted when the formula amount is known. Additionally, the HA will explain which items or developments will be added or deleted to adjust for the next year's formula amount and that any added items will come from the Five-Year Action Plan. This will enable HAs to quickly make necessary adjustments to the plan when the formula amount is known. HAs must also assure that all work items are reflected in the Physical Needs Assessments and Management Needs Assessments. HAs not pursuing advance planning would be permitted to wait until after receipt of their formula amount for FFY 1995, *i.e.*, the beginning of the next fiscal year, and then hold the advance meeting and public hearing. However, this would delay the annual submission, and as a result, the FFY 1995 funds would not be available until much later in the FFY.

The current regulation requires HAs, within 30 calendar days of the date of HUD's notice of estimated funding level, to provide written notice to each of the democratically elected presidents of resident organizations of the developments covered by the comprehensive plan. HAs have encountered problems in making distinctions regarding who is to be notified (*e.g.*, determining whether presidents of resident organizations have been democratically elected and assuring that all affected resident organizations have been notified). The Department wants to promote full and adequate notice of this funding to all interested parties (*e.g.*, residents, duly elected resident organizations, local government officials and other interested parties). It is proposed that public notice (which would effectively include all interested parties, especially duly elected resident organizations) should be provided, and the method of notification would be determined by the HA.

The public notice can take various formats based upon local circumstances and resources. The CGP Handbook will provide examples of ways to provide effective public notice (*e.g.*, newspaper announcements, resident cable TV programs, posted notices or written announcements). The public notice would provide notice of the advance meeting to be held with the residents, notice of the public hearing, and the following information: summary of activities of the previous year (uses of past funding) and progress update, estimated funding level (*i.e.*, current year funding or formula amount whichever the HA elects); a summary of the CGP requirements; the estimated time frames for completion of the

required CGP documents; and the requirement for resident participation in the planning, development and monitoring of modernization activities under CGP.

Additionally, HUD will no longer prescribe by regulation that there must be three weeks between the advance meeting and the public hearing, but will require that the meeting should be sufficiently in advance of the public hearing to allow for appropriate feedback. See §§ 905.672(b)(4) and 968.320(b)(4). The resident partnership process provides a vehicle for an ongoing dialogue between HAs and residents throughout the planning process. HUD has made this change in response to concerns that the timing and frequency of these meetings should be determined by local conditions and left up to local judgement, rather than determined by an arbitrary time limit. Rather than have the Department state the number of meetings required before the public hearing, HUD believes that in order to achieve maximum resident involvement in the process, the number of meetings should be determined by the HAs and residents of those authorities.

In order to reduce the HAs' and HUD's administrative burden and to streamline the process, HUD has eliminated the requirement to provide a presumptive formula estimate. See existing §§ 905.669(b) and 968.315(b). As a result, HAs will not be required to amend the Five-Year Action Plan and/or Work Statement during a FFY because of differences in the presumptive estimate and final formula amount. HUD intends to provide only one formula amount in a FFY, and this will eliminate burdens for both HAs and HUD. This change would also encourage HAs to make Annual Submissions as soon as they receive their formula amount for the FFY. See proposed §§ 905.669 and 968.315.

A related change to the notification of formula funding is the timing of the submission of appeals and the adjustment from successful appeals and a change to the appeals based on the formula amount. Currently, HAs may appeal the presumptive formula estimates based upon unique circumstances or error. Any adjustments to the formula allocation resulting from such successful appeals are made from the subsequent years' appropriation of funds, except for appeals based upon error where there are no issues in dispute (such appeals will result in adjustments made from the current year's allocation of funds). Currently, HAs may also appeal HUD's determination of final formula amounts. Any adjustments resulting from such successful appeals are made from the current year's allocation of funds to the greatest extent feasible. Currently, mod troubled PHAs may appeal their reduced formula allocations and any adjustment resulting from such successful appeals are made in the current year's allocation of funds. See §§ 905.669 and 968.315.

Since HUD does not plan to provide a presumptive formula notice, there is no need for an appeal based on a presumptive formula amount. HAs would not lose any of their current procedural rights to appeal. However, for purposes of consistency, all appeals must be submitted within 60 days after notification of the formula award. HAs may appeal the formula amount on the basis of error or unique circumstances or the reduced formula amount (applies to mod troubled PHAs only). Adjustments resulting from successful appeals based on error or unique circumstances will be made in subsequent FFYs. A mod troubled PHA will be advised of its full formula and its reduced formula amount. If it successfully appeals the reduced amount, it will get full funding in the same FFY. If it does not appeal or its appeal is unsuccessful, the difference between its full funding and its reduced funding will be redistributed to other HAs in the following FFY. However, such PHAs are entitled to credits for this temporary loss of funding.

Currently, the Executive Summary encompasses four components, each a separate document: (1) Summary of Preliminary Estimated Costs; (2) Strategy Statement; (3) Statement of Developments with Comprehensive Modernization in Progress; and (4) Description of Resident Partnership and Summary of General Issues. The Executive Summary is submitted to HUD with the original Comprehensive Plan and resubmitted every sixth year when the Plan is updated. This rule proposes to eliminate the requirement for an Executive Summary with four components. Instead, the HA would submit the following: (1) Summary of Preliminary Estimated Costs and (2) Description of Resident Partnership and Summary of General Issues with each submission of the Comprehensive Plan (initial year and every sixth year). The Department suggests that the Strategy Statement and the Statement of Developments with Comprehensive Modernization in Progress provided information that was essential for the initial implementation of the program but will not be needed when the Plan is updated in year six. Also, the provision for a Summary of General Issues with each annual submission is retained.

The Department is proposing two incentives for PHAs and IHAs. As previously mentioned, PHAs that are high performers under PHMAP and IHAs that are determined to be high performing by the Field Office would not have a cap on management improvements. The second incentive is the elimination of prior HUD approval for force account labor. The Department recognizes that the basis for being entitled to the force account labor incentive is different for IHAs than for PHAs. IHAs have, by necessity, developed significant expertise in the use of force account labor, due to the remoteness of some Indian housing units as well as the shortage of available contract labor. In acknowledgment of IHAs' successful experience with force account labor, the Department is proposing that prior HUD approval be required only of PHAs that are not high performers under PHMAP and IHAs which are designated high risk under § 905.135 or for all HAs where stipulated by a notice of deficiency or corrective action order.

HAs, which are required to obtain prior approval, will continue to indicate the use of force account on their annual submission and it may be approved as part of the funding process, or HAs may request HUD approval for force account labor at any time. HUD will be eliminating the Handbook requirement and modifying section 107(d) of the Annual Contributions Contract that requires HUD approval of force account work for high performers under PHMAP or IHAs that are not designated as "high risk".

Another concern of many HAs is the use of total development cost (TDC) in § 905.672(d)(4) and § 968.320(d)(4). For demolition and new construction, TDCs are currently used to assess whether modernization is more expensive than new development. Since few HAs are performing comprehensive modernization (*i.e.*, total modernization), the cost of such modernization will rarely if ever exceed TDC. If it does, the HA must justify reasons for desiring to modernize the development. In addition, existing regulations require a new evaluation every sixth year when the Five-Year Action Plan is updated. This evaluation does not capture all past modernization as was done in comprehensive modernization, but it is rather a single point in time assessment.

Rather than imposing an arbitrary measurement of costs (*i.e.*, hard costs of 90 percent or less of TDC), the Department proposes to eliminate TDC

for reasonable cost and replace it with the HA's determination of reasonable cost determined on a major work-item basis. HAs would be required to keep documentation in its file to support its reasonable cost determinations. It is suggested that the HA use a National Guideline adjusted to reflect local conditions (or if applicable, regional versions of National Guidelines) such as R.S. Means Index, the Dodge Report and Marshall and Swift. All work items must meet cost reasonableness which will also be accomplished by using part 85 procurement procedures and OMB Circular A–87. An HA is also allowed to substitute estimates of cost reasonableness based upon recent past bidding experience for the National Guidelines mentioned above. In its annual review of HA performance, HUD will review the HA's cost reasonableness determinations. The Department specifically requests comments on this proposal.

It should also be noted that many IHA's with large numbers of homeownership (Mutual Help) units are performing comprehensive modernization on a widespread basis. The Department is considering retaining the TDC limitations as the basis for establishing reasonable costs for IHAs. Comments are specifically requested on applying these limits only to IHAs.

The Department is often asked about the extent to which CGP funds may be expended on non-viable units (*e.g.*, units scheduled for demolition) to maintain the habitability until residents can be relocated. The current regulation provides that where an HA's analysis of a development, establishes that completion of the identified improvements and replacements will not result in the long-term physical and social viability of the development at a reasonable cost, the HA shall not expend CGP funds for the development, except for emergencies. See §§ 905.672(d)(4)(ii) and 968.320(d)(4)(ii). This proposed rule adds an additional exception for "essential non-routine maintenance necessary to maintain habitability until residents can be relocated." The HA must specify in its Comprehensive Plan the actions it proposes to take with respect to the non-viable development (*e.g.*, demolition or disposition under 24 CFR part 970). Any routine maintenance work must be performed using operating subsidy. The CGP Handbook will provide additional guidance in this area.

The Department is also proposing to lift its limitation on the $75 million reserve for emergencies and natural disasters. Currently, the Department limits the use of this reserve to HAs participating in the CGP (see §§ 905.601(b), 905.667, 968.103(b) and 968.312). The Department proposes to permit smaller HAs (participating in the CIAP) (with less than 250 units) to also apply for emergency and natural disaster funds from this reserve. HAs under the CIAP may also continue to receive assistance for emergencies and disasters in accordance with the existing CIAP requirements and procedures. HAs participating in CGP must first use their annual formula allocation of CGP funds, any other unobligated CIAP or CGP funds, or replacement reserve, for emergencies before they can apply for funds from the $75 million reserve. HAs participating in CIAP must use all other funds available, including residual receipts and unobligated CIAP (and there must be no moderization funds available for the remainder of the fiscal year) for emergencies before they can apply for funds from the $75 million reserve. In addition, HAs participating in CIAP must also have the emergency modernization work under contract within 6 months after receiving HUD's approval of emergency reserve funds. Although funding for repair and replacement needs which arise from natural and other disaster is not required to be repaid, HAs are required to repay funding for emergencies, from future allocations, where available. The provisions for repayment by HAs participating in CGP have not been changed. HAs participating in CIAP would also be required to repay funding for emergencies, if funds become available; however, they would not be required to apply for a future CIAP grant to repay the reserve account.

C. Miscellaneous Technical Proposed Changes

Numerous incorrect regulatory references would be corrected. The method for counting new development units (in order to determine the HA's program size) would be clarified to reflect actual development procedures (*i.e.*, count the increase in units reaching DOFA (date of full availability) and under ACC amendment). See §§ 905.601(k)(2)(i) and 968.103(k)(2)(i). The annual submission of activities and expenditures would consist of the Five-Year Action Plan with a Work Statement for each of the five years, local government statement and other miscellaneous documents outlined in §§ 905.678 and 968.330. Annual resident and local government participation would be clarified by noting that annual advance meetings with residents and annual public hearings are required. See §§ 905.678(d)(2) and (3) and 968.330(d)(2) and (3).

D. Handbook Changes and Clarifications to Existing Procedures

HUD plans to prepare handbook page changes that will provide guidance on the revised procedures and examples of the types of documentation that would be acceptable to HUD and provide a revised Five-Year Action Plan form (sample completed document will be provided). The Handbook will also provide guidance on the required interrelationship between management improvements and identified management needs. In addition, it will clarify that even HAs that are high performers under PHMAP will have management needs.

The CGP Handbook will also revise the environmental review procedures to require that HUD must conduct an environmental review in accordance with 24 CFR part 50 of all proposed actions identified in the Five-Year Action Plan. This change is required because of the proposed full fungibility of work items. In addition, the level of detail in the annual work statements must be sufficient for HUD to perform environmental reviews, as applicable, with respect to the various work items.

The level of Field Office review will also be discussed in the Handbook with an emphasis on ways to improve and reduce unnecessary areas for review. Handbook guidance will also include the following:

(1) Ways to achieve more effective resident participation/consultation;

(2) Discussion of limits on modernization after a decision has been made that certain buildings should be demolished or disposed of (keeping buildings habitable as long as they are occupied);

(3) How to receive HUD approval for amendments to annual submission;

(4) Examples of valid delays outside HA control which may extend the time for performance;

(5) The exemption from the continuing capacity review for delays caused by LOCCS/VRS;

(6) Ways to enhance fungibility by expending the oldest money first and closing out older programs; and

(7) Discussion of emergency work items.

Several questions regarding existing requirements would not be affected by this proposed rule and have been raised by program participants. Although the purpose of this preamble is to discuss changes proposed, some of the following issues are significant and may interfere with successful program implementation. Many of these issues involve procurement. HAs should refer to the new Procurement Handbook for

Public Housing Agencies and Indian Housing Authorities, 7460.8 REV–1. HUD has also issued PIH notice 93–50 on expediting procurement and contracting in Public and Indian Housing.

It should be noted that procurement thresholds cannot be imposed without appropriate procedure (notice of deficiency and/or correction action order). Advance procurement planning is one of the most important actions that an HA can take to speed up the procurement process. For example, an HA is encouraged to prepare solicitations for services prior to ACC execution even though contracts cannot be awarded until funds are available. HAs may also solicit for an indefinite quantity contract where separate orders are issued to the selected architect/engineer firm for each service as the need arises or an HA can issue a solicitation for several architect/engineer firms to provide services on an as required basis rather than merely one firm. HAs may also join in intergovernmental agreements. HAs that possess the capability may continue to perform in-house A & E.

In addition to the sealed bid method, HAs may use the competitive proposals method to perform modernization work. This method has been successfully used in public housing development (known as "turnkey") for many years. The competitive proposals method may, particularly for larger contracts, speed up the modernization process. This can be accomplished by developing a Request for Proposals (RFP) that places a substantial amount of the responsibility for modernization work with a contractor/developer. Using the turnkey method as a model, the HA would execute a fixed price contract in which the developer would be responsible for all designs of specific work items identified in the RFP, soliciting and contracting (in the developer's name) for construction work, contract administration and construction inspection. The contract could either provide for progress payments, as in the sealed bid method, or a lump sum payment after successful completion of all work, as in the turnkey method. The advantages to the two payment systems are: (1) With progress payments the developer does not have to obtain large amounts of outside financing and the overall costs should, therefore, be less; or (2) with the lump sum payment upon completion of construction, the developer has a significant incentive (financing costs) to complete construction quickly. The HA should hire an inspecting architect or engineer to inspect the developer's work to ensure that it complies with the contract documents and to otherwise protect the HAs interests.

E. Other HUD Initiatives

Many HAs and Field Office have difficulties with the 2530 Previous Participation. This process assures the Department that persons debarred, suspended, determined to be ineligible or voluntarily excluded are not participating in this program. This process is part of a larger system at HUD and Government-wide. See 24 CFR part 24, subpart E. The Department is taking steps to improve this system and expedite access to the system for all HAs. The Department has also budgeted in FY 1994 for the development of an automated system which would allow HAs to directly access HUD's 2530 system.

HUD also plans to work with HA interest groups in updating the maximum space guidelines for administrative, maintenance and community space.

Users of LOCCS/VRS have requested that HUD eliminate the percent limitation on monthly drawdowns for standard performers. HUD has been working with the Comptroller, Inspector General and Treasury on ways to improve this system and will consider this and other users' recommendations. As a result of this proposed rulemaking, HUD will also be incorporating into the system the ability for five-year fungibility.

HAs and their interest groups have requested clarification and expansion of eligible and ineligible work items. HUD currently provides examples of ineligible physical and management improvement work items in the CGP Handbook at paragraph 4–19. HUD will consider additional recommendations from HAs and their interest groups.

The PHMAP rule has received many public comments which are now being reviewed. The modernization indicator is being revised to cover CGP. The CGP Audit Guide is under review by OMB.

F. Economic Opportunities for Low- and Very Low-Income Persons

Section 3 of the Housing and Urban Development Act of 1968 (section 3) requires that to the "greatest extent feasible," opportunities for training and employment arising in connection with HUD programs be given to lower income persons residing within the unit of local government or the metropolitan area as determined by the Secretary. It also requires that to the "greatest extent feasible," contracts for work to be performed in connection with any such project" be awarded to business concerns, including but not limited to individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project." Existing regulations implementing these requirements appear at 24 CFR part 135. PHAs participating in the CGP program are required to comply with section 3. See 24 CFR § 968.110(a).

Section 3 was amended by section 915 of the Housing and Community Development Act of 1992, to require that HAs and their contractors and subcontractors, make their "best efforts," consistent with existing Federal, State, and local laws and regulations, to give low- and very low-income persons the training and employment opportunities generated by development assistance (section 5 of the Act), operating assistance (section 9 of the Act), and modernization grants (section 14 of the Act). Section 3, as amended, also requires that HAs and their contractors and subcontractors, make their "best efforts," consistent with existing Federal, State, and local laws and regulations, to award contracts for work to be performed in connection with development assistance, operating assistance and modernization grants, to business concerns that provide economic opportunities for low- and very low-income persons.

HUD has published a proposed rule to implement the amendments to section 3 by the Housing and Community Development Act of 1992. See 58 FR 52534, dated October 8, 1993. The Secretary is committed to furthering economic opportunities to low- and very low-income persons covered by section 3. Until section 3 as amended, is implemented by regulations, HUD intends to advance the current requirements of section 3 as provided in 24 CFR part 135. For CGP, HUD intends to require through the letter transmitting the FY 1994 presumptive estimate, that each HA use good faith efforts and provide anticipated projections of the contracts, jobs and training to section 3 residents as a result of the FY 1994 funding.

By FY 1995, HUD expects to have an effective final rule implementing the amended section 3. For CGP, this proposed rule proposes that HAs certify as to compliance with section 3 and provide anticipated projections based on best efforts of the contracts, jobs and training to section 3 residents with their annual submissions. See

§§ 905.672(d)(7)(xviii) and 968.320(d)(7)(xviii). The Department also plans to require that HAs report their section 3 results annually (in one report covering all affected HUD programs administered by the HA). HAs would be required to keep files to support their annual submissions and annual reports along with their section 3 program plan. HUD would monitor each HA's section 3 efforts (not merely numbers of contracts, jobs or training) as part of the annual HUD review. HA comments on these proposed CGP provisions or alternative actions to support section 3 in CGP are requested.

EO 12866 Statement

This proposed rule was reviewed and approved by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review, which was signed by the President on September 30, 1993. Any changes made to the proposed rule as a result of that review process are clearly identified in the docket file, which is open for public inspection in the office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. The proposed rule provides revisions to the existing CGP under which HAs receive modernization assistance from HUD on the basis of a formula. HUD does not anticipate a significant economic impact on small entities since HAs will continue to carry out their modernization activities by entering into contracts for the work as they now do.

Finding of No Significant Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5 p.m. weekdays) in the Office of the Rules Docket Clerk, room 10272, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the order. The revised CGP is consistent with federalism principles since it reduces unnecessary burdens on HAs. While the program is revised, the primary change is only in the way that HUD processes and reviews HA modernization activities, and not the modernization activities. Since participation by HAs is discretionary, this proposed rule lacks the direct and substantial effects on HAs required for a policy with federalism implications under the Order.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this proposed rule, as those policies and programs relate to family concerns. The proposed rule does not have the potential for significant impact on family formation, maintenance, or general well-being, since its effect is limited to revising program procedures for HAs applying for discretionary grants.

Regulatory Agenda

This proposed rule was listed as item 1647 under the Office of Public and Indian Housing in the Department's Semiannual Regulatory Agenda published on October 25, 1993 (58 FR 56402, 56451) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

Anti-Lobbying

On February 26, 1990, the Department published an interim rule (24 CFR part 87) advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a prohibition mandated by Congress. Section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989) generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The interim rule generally prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition, the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited, if paid with appropriated funds. IHAs established by an Indian Tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

The certification and disclosure requirements apply to all grants in excess of $100,000. All potential grantees are required to submit the certification, and to make the required disclosure if the grant amount exceeds $100,000. Potential grantees should refer to 24 CFR part 87 for the language for the certification and disclosure. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

The Catalog of Domestic Assistance numbers for the programs affected by this proposed rule are 14.146, 14.147, 14.850, 14.851, 14.852, and 15.141.

List of Subjects

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 968

Grant programs—housing and community development, Indians, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to amend 24 CFR parts 905 and 968 as set forth below:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for 24 CFR part 905 would be revised to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437u, 1437aa, 1437bb, 1437cc, 1437ee, and 3535(d).

§ 905.102 [Amended]

2. Section 905.102 would be amended by removing the definitions for *Annual statement* and for *Major changes.*

3. Section 905.601 would be amended by revising paragraph (b); by removing the reference to "§ 905.669(b)(2)" in paragraph (h) and inserting in its place "§ 905.669(b)"; by adding three sentences to the end of paragraph (j); and by revising paragraph (k)(2)(i), to read as follows:

§ 905.601 Allocation of funds under section 14.

* * * * *

(b) *Set-aside for emergencies and disasters.* For each FFY, HUD shall reserve from amounts approved in the appropriation act for grants under this part and part 968 of this title, $75 million (which shall include unused reserve amounts carried over from previous FFYs), which shall be made available to IHAs and PHAs for modernization needs resulting from natural and other disasters, and from emergencies. HUD shall replenish this reserve at the beginning of each FFY so that it always begins with a $75 million balance. Any unused funds from previous years will remain in the reserve until allocated. The requirements governing the reserve for disasters and emergencies and the procedures by which an IHA may request such funds, are set forth in § 905.667.

* * * * *

(j) *Calculation of number of units.* * * * New development units that are added to an IHA's or PHA's inventory will be added to the overall unit count so long as they are under ACC amendment and have reached DOFA by the first day in the FFY in which the formula is being run. Any increase in units (reaching DOFA and under ACC amendment) as of the beginning of the FFY shall result in an adjustment upwards in the number of units under the formula. New units reaching DOFA after this date will be counted for formula purposes as of the following FFY.

(k) * * *

(2) * * *

(i) Increases in the number of units resulting from the conversion of existing units will be added to the overall unit count so long as they are under ACC amendment by the first day in the FFY in which the formula is being run;

* * * * *

4. Section 905.666 would be amended by revising paragraphs (a)(1) through (a)(3), (f)(1)(iii), and (m) to read as follows:

§ 905.666 Eligible costs.

(a) * * *

(1) Undertaking activities described in its approved Five-Year Action Plan under § 905.672(d)(5);

(2) Carrying out emergency work, whether or not the need is indicated in the IHA's approved Comprehensive Plan (including Five-Year Action Plan) or Annual Submission;

(3) Funding a replacement reserve to carry out eligible activities in future years, subject to the restrictions set forth in paragraph (f) of this section;

* * * * *

(f) * * *

(1) * * *

(iii) A management improvement requires more funds than the IHA may use under its 20% limit for management improvements, and the IHA needs to save a portion of subsequent year(s) grants, to fund the work item;

* * * * *

(m) *Cost limitation.* (1) Notwithstanding the full fungibility of work items in § 905.675(c), an IHA shall not use more than a total of 20 percent of its annual grant for management improvement costs in account 1408, unless specifically approved by HUD, or unless the IHA is determined by the Field Office to be high performing and have administrative capacity under § 905.135. To the maximum extent feasible, HAs should use management improvement funds to train residents in carrying out activities related to the modernization-funded physical and management improvements.

(2) Notwithstanding the full fungibility of work items in § 905.675(c), an IHA shall not use more than a total of 7 percent of its annual grant on administrative costs in account 1410, excluding any costs related to in-house lead-based paint or asbestos testing, in-house architectural/engineering (A/E) work, or other special administrative costs required by state, tribal or local law, unless specifically approved by HUD. In the case of an IHA whose jurisdiction covers an unusually large geographic area, an additional two percent of the annual grant may be spent on costs related to travelling to the IHA's developments for CGP-related business, as specifically approved by HUD. (For purposes of this paragraph, "an unusually large geographic area" means an area served by an IHA whose offices are physically separated from the majority of its developments by distances that require overnight travel and/or travel by air or other commercial carriers, *e.g.*, a statewide IHA with developments in multiple localities; a regional IHA with developments in multiple counties or states; or an Alaska IHA with developments in multiple villages.);

* * * * *

5. Section 905.667 would be amended by revising paragraphs (a)(1) and (a)(3) to read as follows:

§ 905.667 Reserve for emergencies and disasters.

(a) *Emergencies*—(1) *Eligibility for assistance.* An IHA (including an IHA that is not considered to be administratively capable under § 905.135) may obtain funds at any time, for any eligible emergency work item as defined in § 905.102 (for IHAs participating in CGP) or for any eligible emergency work item (described as emergency modernization in § 905.102) (for IHAs participating in CIAP), from the reserve established under § 905.601(b). However, emergency reserve funds may not be provided to an IHA participating in CGP that has the necessary funds available from any other source, including its annual formula allocation under § 905.601(e) and (f), other unobligated modernization funds, and its replacement reserves under § 905.666. Emergency reserve funds may not be provided to an IHA partipating in CIAP that has the necessary funds available from any other source, including unobligated CIAP (and no CIAP modernization is available for the remainder of the fiscal year) and residual receipts. IHAs participating in CIAP must also have the emergency modernization work under contract within 6 months after receiving HUD's approval of emergency reserve funds. An IHA is not required to have an approved comprehensive plan under § 905.672 before it can request emergency assistance from this reserve.

* * * * *

(3) *Repayment.* An IHA that receives assistance for its emergency needs from the reserve under § 905.601(b) must repay such assistance from its future allocations of assistance, where available. For HAs participating in the CGP, HUD shall deduct up to 50 percent of an IHA's succeeding year's formula allocation under § 905.601 (e) and (f) to repay emergency funds previously provided by HUD to the IHA. The remaining balance, if any, shall be deducted from an IHA's succeeding years' formula allocations.

* * * * *

6. Section 905.669 would be amended by adding three sentences to the end of paragraph (a)(1); by revising paragraphs (b) and (c); by adding a new paragraph (d); and by adding the OMB control number to the end of the section, to read as follows:

§ 905.669 Allocation of assistance.

(a) * * *

(1) * * * On an annual basis, HUD will transmit to the IHA the formula characteristics report which reflects the data that will be used to determine the IHA's formula share. The IHA will have 30 days to review and advise HUD of errors in this HUD report. Necessary adjustments will be made to the IHA's data before the formula is run for the current FFY.

* * * * *

(b) *HUD notification of formula amount; appeal rights.* (1) *Formula amounts notification.* After HUD determines an IHA's formula allocation under § 905.601 (e) and (f) based upon the IHA, development, and community characteristics, it shall notify the IHA of its formula amount and provide instruction on annual submission in accordance with §§ 905.672(a) and 905.678;

(2) *Appeal based upon unique circumstances.* An IHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of "unique circumstances." The IHA must indicate what is unique, and specify the manner in which it is different from all other IHAs participating in the CGP, and provide any necessary supporting documentation. HUD shall render a written decision on an IHA's appeal under this paragraph within 60 calendar days of the date of its receipt of the IHA's request for an appeal. HUD shall publish in the **Federal Register** a description of the facts supporting any successful appeals based upon "unique circumstances." Any adjustments resulting from successful appeals in a particular FFY under this paragraph shall be made from the subsequent years' allocation of funds under this part;

(3) *Appeal based upon error.* An IHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of an error. The IHA may appeal on the basis of error the correctness of data in the formula characteristics report. The IHA must describe the nature of the error, and provide any necessary supporting documentation. HUD shall respond to the IHA's request within 60 calendar days of the date of its receipt of the IHA's request for an appeal. Any adjustment resulting from successful appeals in a particular FFY under this paragraph shall be made from subsequent years' allocation of funds under this part;

(c) *IHAs determined to be high risk.* If an IHA is determined to have serious deficiencies in accordance with § 905.135, or if the IHA fails to meet, or to make reasonable progress toward meeting, the goals previously established in its management improvement plan under § 905.135, HUD may designate the IHA high risk. If the IHA is designated high risk with respect to modernization, HUD may withhold some or all of the IHA's annual grant; HUD may declare a breach of the grant agreement with respect to all or some of the IHA's functions so that the IHA or a particular function of the IHA may be administered by another entity; or HUD may take other sanctions authorized by law or regulation.

(d) *Obligation of formula funding.* All formula funding should be obligated within two years of allocation or such longer period approved by HUD. If the IHA fails to obligate funds within this period, they may be subject to an alternative management strategy which may involve third-party oversight or administration of the modernization function. HUD would only require such action after a corrective action order had been issued under § 905.687 and the IHA failed to comply with the order. HUD could then issue an alternative management strategy in a correction action order. An IHA may appeal in writing the corrective action order imposing an alternative management strategy within 60 days of that order. HUD Headquarters shall render a written decision on an IHA's appeal within 60 calendar days of the date of its receipt of the IHA's appeal.

(Approved by the Office of Management and Budget under control number 2577–0157)

7. Section 905.672 would be amended by revising paragraphs (a), (b)(2)(i), (b)(3) through (b)(5), (c)(2), (d)(1), (d)(2)(i)(E), (d)(4), (d)(5)(i), (d)(5)(iii), (d)(6)(i), (d)(6)(ii), (d)(7)(v), (d)(7)(viii), and (d)(7)(xv); by adding a new paragraph (d)(7)(xviii); and by revising paragraphs (e)(2) through (e)(4), to read as follows:

§ 905.672 Comprehensive Plan (including Five-Year Action Plan).

(a) *Submission.* HUD shall notify IHAs of the requested date for submitting or updating a Comprehensive Plan. For planning purposes, IHAs may use the amount they received under CGP in the prior year in developing their Comprehensive Plan or they may wait for the annual HUD notification of formula amount under § 905.669(b)(1).

(b) * * *

(2) * * *

(i) To assure that residents are fully briefed and involved in developing the content of, and monitoring the implementation of, the Comprehensive Plan including, but not limited to, the physical and management needs assessments, viability analysis, Five-Year Action Plan, and Work Statements for each year. If necessary, the IHA shall develop and implement capacity building strategies to ensure meaningful resident participation in CGP. Such technical assistance efforts for residents are eligible management improvement costs under CGP;

* * * * *

(3) *Public notice.* Within a reasonable amount of time before the advance meeting for duly elected resident organizations under paragraph (b)(4) of this section, and the public hearing under paragraph (b)(5) of this section, the IHA shall provide public notice of the advance meeting and the public hearing in a manner determined by the IHA and which ensures notice to all duly elected resident organizations. The public notice shall also include a summary of activities of the previous year (uses of past funding) and progress update, estimated funding level (*i.e.*, current year funding or formula amount, whichever the IHA elects); a summary of the CGP requirements; the estimated time frames for completion of the required CGP documents; and the requirement for resident participation in the planning, development and monitoring of modernization activities under the CGP;

(4) *Advance meeting for duly elected resident organizations.* The IHA shall hold, within a reasonable amount of time before the public hearing under paragraph (b)(5) of the section, a meeting for residents and duly elected resident organizations at which the IHA shall explain the components of the Comprehensive Plan. The meeting shall be open to all residents and duly elected resident organizations;

(5) *Public Hearing.* The IHA shall hold at least one public hearing, and any appropriate number of additional hearings, to ensure ample opportunity for residents, duly elected resident organizations, local government officials, and other interested parties, to express their priorities and concerns. The IHA shall give full consideration to the comments and concerns of

residents, local government officials, and other interested parties.

(c) * * *

(2) A copy of the summary of total preliminary estimated costs to address physical needs by each development and management/operations needs IHA-wide and a specific description of the IHA's process for maximizing the level of participation by residents.

* * * * *

(d) * * *

(1) *Summaries.* An IHA shall include as part of its Comprehensive Plan the following summaries:

(i) A summary of total preliminary estimated costs to address physical needs by each development and management needs IHA-wide; and

(ii) A specific description of the IHA's process for maximizing the level of participation by residents during the development, implementation and monitoring of the comprehensive plan, a summary of the general issues raised on the plan by residents and others during the public comment process and the IHA's response to the general issue. IHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the IHA's files and made available to residents, duly elected resident organizations, and other interested parties, upon request.

(2) * * *

(i) * * *

(E) In addition, the IHA shall provide with respect to vacant or non-homebuyer-occupied Turnkey III units, the estimated number of units that the IHA is proposing for substantial rehabilitation and subsequent sale, in accordance with § 905.666(d)(3).

* * * * *

(4) *Demonstration of long-term physical and social viability*—(i) *General.* The plan shall include, on a development-by-development basis, an analysis of whether completion of the improvements and replacements identified under paragraphs (d)(2) and (d)(3) of this section will reasonably ensure the long-term physical and social viability of the development at a reasonable cost. The IHA shall keep documentation in its files to support its reasonable cost determinations of each major work item (*e.g.*, kitchen cabinets, exterior doors). HUD will review cost reasonableness as part of its review of the Annual Submission and the Performance and Evaluation Report. Where necessary, HUD will review the IHA's documentation in support of its cost reasonableness;

(ii) *Determination of non-viability.* Where an IHA's analysis of a development, under paragraph (d) of this section, establishes that completion of the identified improvements and replacements will not result in the long-term physical and social viability of the development at a reasonable cost, the IHA shall not expend CGP funds for the development, except for emergencies and essential non-routine maintenance necessary to maintain habitability until residents can be relocated. The IHA shall specify in its Comprehensive Plan the actions it proposes to take with respect to the non-viable development (*e.g.*, demolition or disposition under 24 CFR part 905, subpart M).

(5) *Five-Year Action Plan*—(i) *General.* The Comprehensive Plan shall include a rolling Five-Year Action Plan to carry out the improvements and replacements (or a portion thereof) identified under paragraphs (d)(2) and (d)(3) of this section. In developing its Five-Year Action Plan, the IHA shall assume that the current year funding or formula amount will be available for each year of its Five-Year Action Plan, whichever the IHA is using for planning purposes, plus the IHA's estimate of the funds that will be available from other sources, such as State, local and tribal governments. All activities specified in an IHA's Five Year Action Plan are contingent upon the availability of funds, and the work items are fungible, *i.e.*, interchangeable;

* * * * *

(iii) *Procedure for maintaining current Five-Year Action Plan.* The IHA shall maintain a current Five-Year Action Plan by annually amending its Five-Year Action Plan, in conjunction with the Annual Submission;

(6) * * *

(i) The IHA developed the Comprehensive Plan/Five-Year Action Plan or amendments thereto in consultation with officials of the appropriate governing body and with development residents covered by the Comprehensive Plan/Five-Year Action Plan, in accordance with the requirements of § 905.672 (b) and (c);

(ii) The Comprehensive Plan/Five-Year Action Plan or amendments thereto are consistent with the appropriate governing body's assessment of its low-income housing needs and that the appropriate governing body will cooperate in providing resident programs and services; and

* * * * *

(7) * * *

(v) The proposed activities, obligations and expenditures in the Five-Year Action Plan/Annual Submission are consistent with the proposed or approved Comprehensive Plan of the IHA;

* * * * *

(viii) The IHA has provided to HUD any documentation that the Department has requested to carry out its review under the National Environmental Policy Act (NEPA) and other related authorities in accordance with 24 CFR 905.120 (a) and (b), and will not obligate, in any manner, the expenditure of CGP funds, or otherwise undertake the activities identified in its Comprehensive Plan/Annual Submission, until the IHA receives written notification from HUD indicating that the Department has complied with its responsibilities under NEPA and other related authorities;

* * * * *

(xv) The IHA has complied with the requirements governing tribal government and resident participation in accordance with 24 CFR 905.672(b), 905.678(d), and 905.684, and has given full consideration to the priorities and concerns of tribal government and residents, including comments which were ultimately not adopted, in preparing the Comprehensive Plan/Five-Year Action Plan and any amendments thereto;

* * * * *

(xviii) The IHA will comply with section 3 of the Housing and Urban Development Act of 1968, as amended, and make best efforts, consistent with existing Federal, State, and local laws and regulations, to give low- and very low-income persons, training and employment opportunities generated by CGP assistance, and to make best efforts, consistent with existing Federal, State, and local laws and regulations, to award contracts for work to be performed in connection with CGP assistance to business concerns that provide economic opportunities for low- and very low-income persons.

(e) * * *

(2) *Amendments to needs assessments.* The IHA must amend its plan by revising its needs assessments whenever it proposes to carry out activities in its Five-Year Action Plan or Annual Submission, that are not reflected in its current needs assessments (except in the case of emergencies). If the bases for the needs assessment have changed substantially, an IHA may propose an amendment to its needs assessments, in connection with the submission of its Annual Submission (see § 905.678(b), or at any other time. These amendments shall be reviewed by HUD in accordance with § 905.675;

(3) *Six-year revision of Comprehensive Plan.* The physical and management needs assessments, and the summaries listed in § 905.672(d)(1) are required to be revised only every sixth year, although the IHA may elect to revise some or all of these more frequently. Every sixth year, an IHA must submit to HUD, as a part of its Annual Submission, a complete revision of its Comprehensive Plan.

(4) *Annual revision of Five-Year Action Plan.* Annually, the IHA shall submit to HUD, with its Annual Submission, an update of its Five-Year Action Plan. Notwithstanding the new fifth year, the IHA shall identify changes in work categories from the previous year Five-Year Action Plan when making this annual submission.

* * * * *

8. In § 905.675, paragraph (b)(1) would be amended by inserting "and § 968.103" after the reference to "§ 905.601" and before the period; by revising paragraph (c); and by adding the OMB approval number to the end of the section, to read as follows:

§ 905.675 HUD review and approval of comprehensive plan (including action plan).

* * * * *

(c) *Effect of HUD approval of Comprehensive Plan.* After HUD approves the Comprehensive Plan (including the Five-Year Action Plan), or any amendments to the plan, it shall be binding upon HUD and the IHA, until such time as the IHA submits, and HUD approves, an amendment to its plan. The IHA shall have full fungibility of work items (may undertake any of the work items) identified in any of the five years of the approved Five-Year Action Plan without further HUD approval. Actual uses of the funds are to be reflected in the IHA annual Performance and Evaluation Report for each grant. See § 905.684. Except for emergencies, the IHA shall consult, to the extent practicable, the residents on significant changes (such as changes in scope of work) whenever it moves work items within the approved Five-Year Action Plan. Documentation of that consultation is to be retained in IHA files. If HUD determines as a result of an audit or monitoring findings that an IHA has provided false or substantially inaccurate data in its Comprehensive Plan/Annual Submission or has circumvented the intent of the program, HUD may condition the receipt of assistance, in accordance with § 950.687. Moreover, in accordance with 18 U.S.C. 1001, any individual or entity who knowingly and willingly makes or uses a document or writing containing any false, fictitious or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(Approved by the Office of Management and Budget under control number 2577–0157)

9. Section 905.678 would be revised to read as follows:

§ 905.678 Annual submission of activities and expenditures.

(a) *General.* The Annual Submission consists of a Five-Year Action Plan with a Work Statement for each of the five years and an implementation schedule for the current year, local government statement, materials demonstrating the partnership process, and other miscellaneous documents outlined in this section. For planning purposes, an IHA may use either the amount of funding received in the current year or the formula amount provided in HUD's notification under § 905.669(b)(1) in developing the Five-Year Action Plan for presentation at the resident meetings and public hearing. The Work Statement for the first year of the Five-Year Action Plan is intended to provide a statement of the activities and costs that the IHA plans to undertake, in whole or in part, with the assistance to be provided by HUD in that year. The Work Statements for all five years will be at the same level of detail so that the IHA may interchange work items as discussed in § 905.672(d)(5)(i).

(b) *Submission.* After considering the amount of HUD assistance under paragraph (a) of this section, and estimating how much funding will be available from other sources, such as State and tribal governments, and determining its activities and costs based on the current FFY formula amount, the IHA shall submit its Annual Submission in accordance with instructions provided by HUD.

(c) *Acceptance for review.* (1) Upon receipt of an Annual Submission from an IHA, HUD shall determine whether:

(i) It is complete in all significant matters; and

(ii) The IHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate IHA performance, audit findings, and civil rights compliance finding.

(2) The IHA has submitted any additional information or assurances required as a result of HUD monitoring findings of inadequate IHA performance, audit findings, and civil rights compliance findings. If the IHA has submitted a complete Annual Submission and all required information and assurances, HUD will accept the submission for review, as of the date of receipt. If the IHA has not submitted all required material, HUD will promptly notify the IHA that it has disapproved the submission, indicating the reasons for disapproval, the modifications required to qualify the Annual Submission for HUD review, and the date by which such modifications must be received by HUD.

(d) *Resident and local government participation.* An IHA is required to develop its Annual Submission, including any proposed amendments to its Comprehensive Plan as provided in § 905.672(e), in consultation with officials of the appropriate governing body (or, in the case of an IHA with developments in multiple jurisdictions, in consultation with the CEO of each such jurisdiction or with an advisory group representative of all jurisdictions) and with residents and especially duly elected resident organizations of the developments covered by the Comprehensive Plan, as follows:

(1) *Public notice.* Within a reasonable amount of time before the advance meeting for residents under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section, the IHA shall provide public notice of the advance meeting and the public hearing in a manner determined by the IHA and which ensures notice to all duly elected resident organizations. The public notice shall also include a summary of activities of the previous year (uses of past funding) and progress update, estimated funding level (*i.e.*, current year funding or formula amount, whichever the IHA elects); a summary of the CGP requirements; the estimated time frames for completion of the required CGP documents; and the requirement for resident participation in the planning, development and monitoring of modernization activities under the CGP;

(2) *Advance meeting with residents.* The IHA shall at least annually hold a meeting open to all residents and duly elected resident organizations. The advance meeting shall be held within a reasonable amount of time before the public hearing under paragraph (d)(3) of this section. The IHA will provide residents with information concerning the contents of the IHA's Five-Year Action Plan (and any proposed amendments to the IHA's Comprehensive Plan to be submitted with the Annual Submission) so that residents can comment adequately at the public hearing on the contents of the Five-Year Action Plan and any proposed

amendments to the Comprehensive Plan.

(3) *Public hearing.* The IHA shall annually hold at least one public hearing, and any appropriate number of additional hearings, to ensure ample opportunity for residents of the developments covered by the Comprehensive Plan, officials of the appropriate governing body, and other interested parties, to express their priorities and concerns and discuss the current status of prior approved programs. The IHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties in developing its Five-Year Action Plan, or any amendments to its Comprehensive Plan.

(4) *Expedited scheduling.* IHAs are encouraged to hold the meeting with residents and duly elected resident organizations under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section between July 1 (*i.e.*, after the end of the program year—June 30) and September 30, using the formula amount for the current FFY. If an IHA elects to use such expedited scheduling, it must explain at the meeting with residents and duly elected resident organizations and at the public hearing that the current FFY amount is not the actual grant amount for the subsequent year, but is rather the amount used for planning purposes and preparing the draft Performance and Evaluation Report. It must also explain that the Five-Year Action Plan will be adjusted when HUD provides notification of the actual formula amount, and explain which items may be added or deleted to adjust for the formula amount and that any added items will come from the Five-Year Action Plan.

(e) *Contents of Work Statement.* The Work Statement for each year must include, for each development or on an IHA-wide basis for management improvements for which work is to be funded out of that year's grant:

(1) A list of development accounts with a general description of work items;

(2) The cost for each work item, as well as a summary of cost by development account;

(3) The IHA-wide or development-specific management improvements to be undertaken during the year;

(4) For each development and for or any management improvements not covered by a HUD-approved management improvement plan, a schedule for the use of current year funds, including target dates for the obligation and expenditure of the funds. In general, HUD expects that an IHA will obligate its current year's allocation of CGP funds (except for its funded replacement reserves) within two years, and expend such funds within three years, of the date of HUD approval, unless longer time-frames are approved by HUD due to local differences;

(5) A summary description of the actions to be taken with non-CGP funds to meet physical and management improvement needs which have been identified by the IHA in its needs assessments;

(6) Any documentation that HUD needs to assist it in carrying out its responsibilities under the National Environmental Policy Act and other related authorities in accordance with § 905.120 (a) and (b);

(7) Other information, as specified by HUD; and

(8) An IHA resolution approving the Annual Submission or any amendments thereto, as set forth in § 905.672(d)(7).

(f) *Additional submissions with Annual Submission.* An IHA must submit with the Annual Submission any amendments to the Comprehensive Plan, as set forth in § 905.672(e), and such additional information as may be prescribed by HUD. HUD shall review any proposed amendments to the Comprehensive Plan in accordance with review standards under § 905.675(b).

(g) *HUD review and approval of Annual Submission*—(1) *General.* An Annual Submission accepted in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the IHA in writing, postmarked within 75 calendar days of the date that HUD receives the Annual Submission for review under paragraph (c) of this section, that HUD has disapproved the Annual Submission, indicating the reasons for disapproval, the modifications required to make the Annual Submission approvable, and the date by which such modifications must be received by HUD. HUD shall not disapprove an Annual Submission on the basis that the Department cannot complete its review under this section within the 75-day deadline;

(2) *Bases for disapproval for Annual Submission.* HUD shall approve the Annual Submission, except where:

(i) *Plainly inconsistent with Comprehensive Plan.* HUD determines that the activities and expenditures proposed in the Annual Submission are plainly inconsistent with the IHA's approved Comprehensive Plan;

(ii) *Contradiction of IHA resolution.* HUD has evidence which tends to challenge, in a substantial manner, the certifications contained in the board resolution, as required by § 905.672(d)(7).

(h) *Amendments to Annual Submission.* The IHA shall advise HUD of all changes to the IHA's approved Work Statement for year one in its Performance and Evaluation Report submitted under § 905.684. Any additional work items (changes which add work items), except for emergency work, must be within the IHA's approved Five-Year Action Plan or receive prior HUD approval.

(i) *Extension of time for performance.* An IHA may revise the target dates for fund obligation and expenditure in the approved Annual Submission whenever any valid delay outside the IHA's control occurs, as specified by HUD. Such revision is subject to HUD review under § 905.687(a)(2) as to the IHA's continuing capacity. HUD shall not review as to an IHA's continuing capacity any revisions to an IHA's Comprehensive Plan and related statements where the basis for the revision is that HUD has not provided the amount of assistance set forth in the Annual Submission, or has not provided such assistance in a timely manner.

(j) *ACC Amendment.* After HUD approval of each year's Annual Submission, HUD and the IHA shall enter into an ACC amendment to obtain modernization funds. The ACC amendment shall require low-income use of housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC).

(k) *Declaration of Trust.* An IHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the IHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. A Declaration of Trust is not required for Mutual Help units.

(Information collections requirements have been approved by the Office of Management and Budget under control number 2577–0157)

10. Section 905.681 would be amended by revising paragraph (a) introductory text and paragraph (b), to read as follows:

§ 905.681 Conduct of modernization activities.

(a) *Initiation of activities.* After HUD has approved a Five-Year Action Plan and entered into an ACC amendment or grant agreement with the IHA for year one of the Plan, the IHA shall undertake the modernization activities and expenditures set forth in its approved

Work Statement for year one or substitute work items from within the approved Five-Year Action Plan, subject to the following requirements:

* * * * *

(b) *Fund requisitions.* To request modernization funds against the approved Work Statement for year one, the IHA shall comply with requirements prescribed by HUD.

* * * * *

11. Section 905.684 would be amended by revising the section heading and paragraphs (a) and (b)(2); by removing paragraph (b)(3); by redesignating paragraphs (b)(4) through (b)(7) as paragraphs (b)(3) through (b)(6), respectively; and by revising newly designated paragraphs (b)(4) and (b)(6), to read as follows:

§ 905.684 IHA Performance and Evaluation Report.

(a) *Submission.* For any FFY in which an IHA has received assistance under this subpart, the IHA shall submit a Performance and Evaluation Report, in a form and at a time to be prescribed by HUD, describing its use of assistance in accordance with the approved Five-Year Action Plan. The IHA must make reasonable efforts to notify residents and officials of the appropriate governing body of the availability of the draft report, make copies available to residents in the development office, and provide residents with at least 30 calendar days in which to comment on the report.

(b) * * *

(2) An explanation of how the IHA has used the CGP funds to address the needs identified in its Comprehensive Plan and to carry out the activities identified in its approved Five-Year Action Plan, and shall specifically address:

(i) Any funds used for emergency needs not set forth in its Five-Year Action Plan; and

(ii) Any changes to the Annual Submission under § 905.678(h);

* * * * *

(4) The current status of the IHA's obligations and expenditures and specifying how the IHA is performing with respect to its implementation schedules, and an explanation of any necessary revision to the planned target dates;

* * * * *

(6) A resolution by the IHA Board of Commissioners approving the Performance and Evaluation Report and containing a certification that the IHA has made reasonable efforts to notify residents in the development(s) and local government officials of the opportunity to review the draft report and to comment on it before its submission to HUD, and that copies of the report were provided to residents in the development office, to local government officials, or furnished upon their request.

* * * * *

12. Section 905.687 would be amended as follows: by revising paragraphs (a)(1)(i), (a)(2)(i)(A), and (a)(3)(ii); by adding a new paragraph (a)(3)(iii); by revising paragraph (e)(2); by redesignating paragraph (e)(6) as (e)(8); by redesignating paragraphs (e)(4) and (e)(5) as (e)(5) and (e)(6); by revising redesignated paragraph (e)(5); by redesignating the second paragraph (e)(3) as (e)(4); and by adding a new paragraph (e)(7) to read as follows:

§ 905.687 HUD review of IHA performance.

(a) * * *

(1) * * *

(i) In making this determination, HUD will review the IHA's performance to determine whether the modernization activities undertaken during the period under review conform substantially to the activities specified in the approved Five-Year Action Plan. HUD will also review an IHA's schedules which are provided with its Annual Submission for purposes of determining whether the IHA has carried out its modernization activities in a timely manner;

* * * * *

(2) * * *

(i) * * *

(A) Carried out its activities under the CGP program, as well as the CIAP, in a timely manner, taking into account the level of funding available and whether the IHA obligates its modernization funds within two years from the execution of the ACC amendment and expends such modernization funds within three years of ACC amendment execution, or such longer period if agreed to by HUD in an implementation schedule, except in circumstances beyond the IHA's reasonable control.

* * * * *

(3) * * *

(ii) With respect to the management condition of the IHA, whether the IHA is making reasonable progress in implementing, the work items (specified in its annual submission and Five-Year Action Plan), necessary to eliminate the deficiencies identified in its management needs assessment; and

(iii) In determining whether the IHA has made reasonable progress, HUD will take into account the level of funding available and whether the IHA obligates its modernization funds within two years from the execution of the ACC amendment and expends such modernization funds within three years of ACC amendment execution, or such longer period if agreed to by HUD in an implementation schedule. The IHA must demonstrate to HUD's satisfaction that any lack of timeliness (beyond the time periods specified in this paragraph or date specified in a HUD approved implementation schedule) has resulted from factors beyond the IHA's reasonable control.

* * * * *

(e) * * *

(2) Submit schedules for completing the work identified in its Work Statements and report periodically on its progress on meeting the schedules;

* * * * *

(5) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the IHA's Comprehensive Plan, Five-Year Action Plan, or Performance and Evaluation Report;

* * * * *

(7) Submit to an alternative management strategy which may involve third-party oversight or administration of the modernization function (see § 905.669(d)); and

* * * * *

PART 968—PUBLIC HOUSING MODERNIZATION

13. The authority citation for 24 CFR part 968 would continue to read as follows:

Authority: 42 U.S.C. 1437d, 1437l; 42 U.S.C. 3535(d).

14. Section 968.103 would be amended by revising paragraph (b); by adding three sentences to the end of paragraph (j); and by revising paragraph (k)(2)(i), to read as follows:

§ 968.103 Allocation of funds under section 14.

* * * * *

(b) *Set-aside for emergencies and disasters.* For each FFY, HUD shall reserve from amounts approved in the appropriation act for grants under part 905 of this title and part 968, $75 million (which shall include unused reserve amounts carried over from previous FFYs), which shall be made available to PHAs and IHAs for modernization needs resulting from natural and other disasters, and from emergencies. HUD shall replenish this reserve at the beginning of each FFY so that it always begins with a $75 million balance. Any unused funds from previous years will remain in the reserve until allocated. The

requirements governing the reserve for disasters and emergencies and the procedures by which a PHA may request such funds, are set forth in § 968.312.

* * * * *

(j) *Calculation of number of units.* * * * New development units that are added to an PHA's or IHA's inventory will be added to the overall unit count so long as they are under ACC amendment and have reached DOFA by the first day in the FFY in which the formula is being run. Any increase in units (reaching DOFA and under ACC amendment) as of the beginning of the FFY shall result in an adjustment upwards in the number of units under the formula. New units reaching DOFA after this date will be counted for formula purposes as of the following FFY.

(k) * * *

(2) * * *

(i) Increases in the number of units resulting from the conversion of existing units will be added to the overall unit count so long as they are under ACC amendment by the first day in the FFY in which the formula is being run;

* * * * *

§ 968.305 [Amended]

15. Section 968.305 would be amended by removing the definitions for *Annual statement* and for *Major changes.*

16. Section 968.310 would be amended by revising paragraphs (a)(1), (a)(2), (f)(1)(iii), and (m); and by removing the reference to "paragraph (g)" in paragraph (a)(3) and inserting in its place "paragraph (f)", to read as follows:

§ 968.310 Eligible costs.

(a) * * *

(1) Undertaking activities described in its approved Five-Year Action Plan under § 968.320(d)(5);

(2) Carrying out emergency work, whether or not the need is indicated in the PHA's approved Comprehensive Plan (including Five-Year Action Plan) or Annual Submission;

* * * * *

(f) * * *

(1) * * *

(iii) A management improvement requires more funds than the PHA may use under its 20% limit for management improvements, and the PHA needs to save a portion of subsequent year(s) grants, to fund the work item;

* * * * *

(m) *Cost limitation.* (1) Notwithstanding the full fungibility of work items in § 968.325(c), a PHA shall not use more than a total of 20 percent of its annual grant for management improvement costs in account 1408, unless specifically approved by HUD or the PHA has been designated as a high performer under PHMAP. To the maximum extent feasible, HAs should use management improvement funds to train residents in carrying out activities related to the modernization-funded physical and management improvements.

(2) Notwithstanding the full fungibility of work items in § 968.325(c), a PHA shall not use more than a total of 7 percent of its annual grant on administrative costs in account 1410, excluding any costs related to in-house lead-based paint or asbestos testing, in-house architectural/engineering (A/E) work, or other special administrative costs required by state or local law, unless specifically approved by HUD. In the case of a PHA whose jurisdiction covers an unusually large geographic area, an additional two percent of the annual grant may be spent on costs related to travelling to the PHA's developments for CGP-related business, as specifically approved by HUD. (For purposes of this paragraph, "an unusually large geographic area" means an area served by a PHA whose offices are physically separated from the majority of its developments by distances that require overnight travel and/or travel by air or other commercial carriers, *e.g.*, a statewide PHA with developments in multiple localities; a regional PHA with developments in multiple counties or states; or an Alaska IHA with developments in multiple villages.);

* * * * *

17. Section 968.312 would be amended by revising paragraphs (a)(1) and (a)(3) to read as follows:

§ 968.312 Reserve for emergencies and disasters.

(a) *Emergencies*—(1) *Eligibility for assistance.* A PHA (including a PHA that has been designated as mod troubled under PHMAP) may obtain funds at any time, for any eligible emergency work item as defined in § 968.305 (for PHAs participating in CGP) or for any eligible emergency work item (described as emergency modernization in § 968.205) (for PHAs participating in CIAP), from the reserve established under § 968.103(b). However, emergency reserve funds may not be provided to a PHA participating in CGP that has the necessary funds available from any other source, including its annual formula allocation under § 968.103 (e) and (f), other unobligated modernization funds, and its replacement reserves under § 968.310(a)(3). Emergency reserve funds may not be provided to a PHA participating in CIAP that has the necessary funds available from any other source, including unobligated CIAP (and no CIAP modernization is available for the remainder of the fiscal year) and residual receipts. PHAs participating in CIAP must also have the modernization work under contract within 6 months after receiving HUD's approval of emergency reserve funds. A PHA is not required to have an approved comprehensive plan under § 968.320 before it can request emergency assistance from this reserve.

* * * * *

(3) *Repayment.* A PHA that receives assistance for its emergency needs from the reserve under § 968.103(b) must repay such assistance from its future allocations of assistance, where available. For PHAs participating in the CGP, HUD shall deduct up to 50 percent of a PHA's succeeding year's formula allocation under § 968.103 (e) and (f) to repay emergency funds previously provided by HUD to the PHA. The remaining balance, if any, shall be deducted from a PHA's succeeding years' formula allocations.

* * * * *

18. Section 968.315 would be amended by revising the section heading; by adding three sentences to the end of paragraph (a)(1); by revising paragraphs (b), (c)(1) and (c)(5); by adding a new paragraph (d); and by adding the OMB control number to the end of the section, to read as follows:

§ 968.315 Allocation of assistance.

(a) * * *

(1) * * * On an annual basis, HUD will transmit to the PHA, the formula characteristics report which reflects the data that will be used to determine the PHA's formula share. The PHA will have 30 days to review and advise HUD of errors in this HUD report. Necessary adjustments will be made to the PHA's data before the formula is run for the current FFY.

* * * * *

(b) *HUD notification of formula amount; appeal rights*—(1) *Formula amounts notification.* After HUD determines a PHA's formula allocation under § 968.103 (e) and (f) based upon the PHA, development, and community characteristics, it shall notify the PHA of its formula amount and provide instruction on annual submission in accordance with §§ 968.320 and 968.330;

(2) *Appeal based upon unique circumstances.* A PHA may appeal in

writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of "unique circumstances." The PHA must indicate what is unique, and specify the manner in which it is different from all other PHAs participating in the CGP, and provide any necessary supporting documentation. HUD shall render a written decision on an PHA's appeal under this paragraph within 60 calendar days of the date of its receipt of the PHA's request for an appeal. HUD shall publish in the **Federal Register** a description of the facts supporting any successful appeals based upon "unique circumstances." Any adjustments resulting from successful appeals in a particular FFY under this paragraph shall be made from subsequent years' allocation of funds under this part;

(3) *Appeal based upon error.* A PHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of an error. The PHA may appeal on the basis of error the correctness of data in the formula characteristics report. The PHA must describe the nature of the error, and provide any necessary supporting documentation. HUD shall respond to the PHA's request within 60 calendar days of the date of its receipt of the PHA's request for an appeal. Any adjustment resulting from successful appeals in a particular FFY under this paragraph shall be made from subsequent years' allocation of funds under this part;

(c) *Reduced formula allocation for PHAs designated as mod troubled under PHMAP*—(1) *Notification.* After a PHA is designated as a mod troubled agency under PHMAP (24 CFR part 901), HUD shall inform the PHA that its funding may be limited under this subpart because of its designation as a mod troubled PHA. HUD shall also provide the PHA with information concerning the PHA's funding levels for CGP, CIAP and MROP for each of the preceding three FFYs for purposes of determining the PHA's reduced formula allocation, in accordance with paragraph (c)(2)(ii) of this section. In addition, HUD will provide the PHA with information on its full formula allocation under § 968.103 (e) and (f), and the amount which represents 25 percent of the difference between the average amounts provided to the PHA in each of the preceding three FFYs and its full formula allocation.

* * * * *

(5) *Reallocation of funds withheld from mod troubled PHAs.* Any amounts which are not provided to a PHA under paragraph (c)(1) of this section because the PHA is designated as a mod troubled agency under PHMAP, shall be reallocated by HUD to other PHAs under this subpart which are not designated as either troubled or mod troubled agencies under PHMAP, and to IHAs under 24 CFR part 905 (subpart I) which have been determined to be administratively capable, in accordance with § 905.135 of this chapter, the ACA, and the Field Office Monitoring of IHAs Handbook. Such funds shall be reallocated in the next FFY based upon the relative needs of these PHAs and IHAs, as determined under the formula.

* * * * *

(d) *Obligation of formula funding.* All formula funding should be obligated within two years of allocation or such longer period approved by HUD. If the PHA fails to obligate funds within the approved time period, they may be subject to an alternative management strategy which may involve third-party oversight or administration of the modernization function. HUD would only require such action after a corrective action order had been issued under § 968.345 and the PHA failed to comply with the order. HUD could then issue an alternative management strategy in a corrective action order. A PHA may appeal in writing the corrective action order imposing an alternative management strategy within 60 days of that order. HUD Headquarters shall render a written decision on a PHA's appeal within 60 calendar days of the date of its receipt of the PHA's appeal.

(Approved by the Office of Management and Budget under control number 2577–0157)

19. Section 968.320 would be amended by revising the section heading; by revising paragraphs (a), (b)(2)(i), (b)(3) through (b)(5), (c)(2), (d)(1)(i), (d)(1)(ii), (d)(2)(i)(E), (d)(4), (d)(5)(i), (d)(5)(iii), (d)(6)(i), (d)(6)(ii), (d)(7)(v), (d)(7)(viii) and (d)(7)(xv); by adding a new paragraph (d)(7)(xviii); by revising paragraphs (e)(2) through (e)(4); and by adding the OMB control number to the end of the section, to read as follows:

§ 968.320 Comprehensive Plan (including Five-Year Action Plan).

(a) *Submission.* HUD shall notify PHAs of the requested date for submitting or updating a Comprehensive Plan. For planning purposes, PHAs may use the amount they received under CGP in the prior year in developing their Comprehensive Plan or they may wait for the annual HUD notification of formula amount under § 968.315(b)(1).

(b) * * *

(2) * * *

(i) To assure that residents are fully briefed and involved in developing the content of, and monitoring the implementation of, the Comprehensive Plan including, but not limited to, the physical and management needs assessments, viability analysis, Five-Year Action Plan, and Work Statements for each year. If necessary, the PHA shall develop and implement capacity building strategies to ensure meaningful resident participation in CGP. Such technical assistance efforts for residents are eligible management improvement costs under CGP;

* * * * *

(3) *Public notice.* Within a reasonable amount of time before the advance meeting for residents under paragraph (b)(4) of this section, and the public hearing under paragraph (b)(5) of this section, the PHA shall provide public notice of the advance meeting and the public hearing in a manner determined by the PHA and which ensures notice to all duly elected resident organizations. The public notice shall also include a summary of activities of the previous year (uses of past funding) and progress update, estimated funding level (*i.e.*, current year funding or formula amount, whichever the PHA elects); a summary of the CGP requirements; the estimated time frames for completion of the required CGP documents; and the requirement for resident participation in the planning, development and monitoring of modernization activities under the CGP;

(4) *Advance meeting for residents.* The PHA shall hold, within a reasonable amount of time before the public hearing under paragraph (b)(5) of the section, a meeting for residents and duly elected resident organizations at which the PHA shall explain the components of the Comprehensive Plan. The meeting shall be open to all residents and duly elected resident organizations;

(5) *Public hearing.* The PHA shall hold at least one public hearing, and any appropriate number of additional hearings, to ensure ample opportunity for residents, local government officials, and other interested parties, to express their priorities and concerns. The PHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties.

(c) * * *

(2) A copy of the summary of total preliminary estimated costs to address physical needs by each development

and management/operations needs PHA-wide and a specific description of the PHA's process for maximizing the level of participation by residents.

* * * * *

(d) * * *

(1) *Summaries.* A PHA shall include as part of its Comprehensive Plan the following summaries:

(i) A summary of total preliminary estimated costs to address physical needs by each development and management needs PHA-wide; and

(ii) A specific description of the PHA's process for maximizing the level of participation by residents during the development, implementation and monitoring of the comprehensive plan, a summary of the general issues raised on the plan by residents and others during the public comment process and the PHA's response to the general issues. PHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the PHA's files and made available to residents, duly elected resident organizations, and other interested parties, upon request.

* * * * *

(2) * * *

(i) * * *

(E) In addition, the PHA shall provide with respect to vacant or non-home buyer-occupied Turnkey III units, the estimated number of units that the PHA is proposing for substantial rehabilitation and subsequent sale, in accordance with § 968.310(d)(3).

* * * * *

(4) *Demonstration of long-term physical and social viability*—(i) *General.* The plan shall include, on a development-by-development basis, an analysis of whether completion of the improvements and replacements identified under paragraphs (d)(2) and (d)(3) of this section will reasonably ensure the long-term physical and social viability of the development at a reasonable cost. The PHA shall keep documentation in its files to support its reasonable cost determinations of each major work item (*e.g.*, kitchen cabinets, exterior doors). HUD will review cost reasonableness as part of its review of the Annual Submission and the Performance and Evaluation Report. Where necessary, HUD will review the PHA's documentation in support of its cost reasonableness;

(ii) *Determination of non-viability.* Where a PHA's analysis of a development, under paragraph (d) of this section, establishes that completion of the identified improvements and replacements will not result in the long-term physical and social viability of the development at a reasonable cost, the PHA shall not expend CGP funds for the development, except for emergencies and essential non-routine maintenance necessary to maintain habitability until residents can be relocated. The PHA shall specify in its Comprehensive Plan the actions it proposes to take with respect to the non-viable development (*e.g.*, demolition or disposition under 24 CFR part 970).

(5) *Five-Year Action Plan*—(i) *General.* The Comprehensive Plan shall include a rolling Five-Year Action Plan to carry out the improvements and replacements (or a portion thereof) identified under paragraphs (d)(2) and (d)(3) of this section. In developing its Five-Year Action Plan, the PHA shall assume that the current year funding or formula amount will be available for each year of its Five-Year Action Plan, whichever the PHA is using for planning purposes, plus the PHA's estimate of the funds that will be available from other sources, such as State and local governments. All activities specified in an PHA's Five-Year Action Plan are contingent upon the availability of funds, and the work items are fungible, *i.e.*, interchangeable;

* * * * *

(iii) *Procedure for maintaining current Five-Year Action Plan.* The PHA shall maintain a current Five-Year Action Plan by annually amending its Five-Year Action Plan, in conjunction with the Annual Submission;

(6) * * *

(i) The PHA developed the Comprehensive Plan/Five-Year Action Plan or amendments thereto in consultation with officials of the appropriate governing body and with development residents covered by the Comprehensive Plan/Five-Year Action Plan, in accordance with the requirements of § 968.320(b)(1) and (2);

(ii) The Comprehensive Plan/Five-Year Action Plan or amendments thereto are consistent with the appropriate governing body's assessment of its low-income housing needs (as evidenced by its Comprehensive Housing Affordability Strategy under 24 CFR part 91, if applicable), and that the appropriate governing body will cooperate in providing resident programs and services; and

* * * * *

(7) * * *

(v) The proposed activities, obligations and expenditures in the Five-Year Action Plan/Annual Submission are consistent with the proposed or approved Comprehensive Plan of the PHA;

* * * * *

(viii) The PHA has provided to HUD any documentation that the Department has requested to carry out its review under the National Environmental Policy Act (NEPA) and other related authorities in accordance with 24 CFR 968.110(c), (d) and (m), and will not obligate, in any manner, the expenditure of CGP funds, or otherwise undertake the activities identified in its Comprehensive Plan/Annual Submission, until the PHA receives written notification from HUD indicating that the Department has complied with its responsibilities under NEPA and other related authorities;

* * * * *

(xv) The PHA has complied with the requirements governing local government and resident participation in accordance with 24 CFR 968.320(b) and (c), 968.330(d), and 968.340, and has given full consideration to the priorities and concerns of local government and residents, including comments which were ultimately not adopted, in preparing the Comprehensive Plan/Five-Year Action Plan and any amendments thereto;

* * * * *

(xviii) The PHA will comply with section 3 of the Housing and Urban Development Act of 1968, as amended, and make best efforts, consistent with existing Federal, State, and local laws and regulations, to give low- and very low-income persons, training and employment opportunities generated by CGP assistance, and to make best efforts, consistent with existing Federal, State, and local laws and regulations, to award contracts for work to be performed in connection with CGP assistance to business concerns that provide economic opportunities for low- and very low-income persons.

(e) * * *

(2) *Amendments to needs assessments.* The PHA must amend its plan by revising its needs assessments whenever it proposes to carry out activities in its Five-Year Action Plan or Annual Submission that are not reflected in its current needs assessments (except in the case of emergencies). If the bases for the needs assessment have changed substantially, a PHA may propose an amendment to its needs assessments, in connection with the submission of its Annual Submission (see § 968.330(b), or at any other time. These amendments shall be reviewed by HUD in accordance with § 968.325;

(3) *Six-year revision of Comprehensive Plan.* The physical and management needs assessments, and the summaries listed in § 968.320(d)(1) are

required to be revised only every sixth year, although the PHA may elect to revise some or all of these more frequently. Every sixth year, a PHA must submit to HUD, as a part of its annual submission, a complete revision of its Comprehensive Plan.

(4) *Annual revision of Five-Year Action Plan.* Annually, the PHA shall submit to HUD, with its Annual Submission, an update of its Five-Year Action Plan. Notwithstanding the new fifth year, the PHA shall identify changes in work categories from the previous year Five-Year Action Plan when making this Annual Submission.

* * * * *

(Approved by the Office of Management and Budget under control number 2577–0157)

20. Section 968.325 would be amended by revising the section heading and paragraph (c); and by adding the OMB control number to the end of the section, to read as follows:

§ 968.325 HUD review and approval of Comprehensive Plan (including Five-Year Action Plan).

* * * * *

(c) *Effect of HUD approval of Comprehensive Plan.* After HUD approves the Comprehensive Plan (including the Five-Year Action Plan), or any amendments to the plan, it shall be binding upon HUD and the PHA, until such time as the PHA submits, and HUD approves, an amendment to its plan. The PHA shall have full fungibility of work items (may undertake any of the work items) identified in any of the five years of the approved Five-Year Action Plan without further HUD approval. Actual uses of the funds are to be reflected in the PHA annual Performance and Evaluation Report for each grant. See § 968.340. Except for emergencies, the PHA shall consult, to the extent practicable, the residents on significant changes (such as changes in scope of work) or whenever it moves work items within the approved Five-Year Action Plan. Documentation of that consultation is to be retained in PHA files. If HUD determines as a result of an audit or monitoring findings that a PHA has provided false or substantially inaccurate data in its Comprehensive Plan/Annual Submission or has circumvented the intent of the program, HUD may condition the receipt of assistance, in accordance with § 968.345. Moreover, in accordance with 18 U.S.C. 1001, any individual or entity who knowingly and willingly makes or uses a document or writing containing any false, fictitious or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(Approved by the Office of Management and Budget under control number 2577–0157)

21. Section 968.330 would be amended by revising paragraphs (a), (b), (c) introductory text, (c)(2), (d), (e) introductory text, (e)(1), (e)(8), (f), (g)(1), (g)(2) introductory text, (g)(2)(i), (h), (i), and (j); by adding a new paragraph (k); and by adding the OMB control number to the end of the section, to read as follows:

§ 968.330 Annual Submission of activities and expenditures.

(a) *General.* The Annual Submission consists of a Five-Year Action Plan with a Work Statement for each of the five years and an implementation schedule for the current year, local government statement, materials demonstrating the partnership process, and other miscellaneous documents outlined in this section. For planning purposes, a PHA may use either the amount of funding received in the current year or the formula amount provided in HUD's notification under § 968.315(b)(1) in developing the Five-Year Action Plan for presentation at the resident meetings and public hearing. The Work Statement for the first year of the Five-Year Action Plan is intended to provide a statement of the activities and costs that the PHA plans to undertake, in whole or in part, with the assistance to be provided by HUD in that year. The Work Statement for all five years will be at the same level of detail so that the PHA may interchange work items as discussed in § 968.320(d)(5)(i).

(b) *Submission.* After considering the amount of HUD assistance under paragraph (a) of this section, and estimating how much funding will be available from other sources, such as State and local governments, and determining its activities and costs based on the current FFY formula amount, the PHA shall submit its Annual Submission in accordance with instructions provided by HUD.

(c) *Acceptance for review.* Upon receipt of an Annual Submission from a PHA, HUD shall determine whether:

* * * * *

(2) The PHA has submitted any additional information or assurances required as a result of HUD monitoring findings of inadequate PHA performance, audit findings, and civil rights compliance findings. If the PHA has submitted a complete Annual Submission and all required information and assurances, HUD will accept the submission for review, as of the date of receipt. If the PHA has not submitted all required material, HUD will promptly notify the PHA that it has disapproved the submission, indicating the reasons for disapproval, the modifications required to qualify the Annual Submission for HUD review, and the date by which such modifications must be received by HUD.

(d) *Resident and local government participation.* A PHA is required to develop its Annual Submission, including any proposed amendments to its Comprehensive Plan as provided in § 968.320 (b) and (c), in consultation with officials of the appropriate governing body (or, in the case of a PHA with developments in multiple jurisdictions, in consultation with the CEO of each such jurisdiction or with an advisory group representative of all jurisdictions) and with residents and especially duly elected resident organizations of the developments covered by the Comprehensive Plan, as follows:

(1) *Public notice.* Within a reasonable amount of time before the advance meeting for residents under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section, the PHA shall provide public notice of the advance meeting and the public hearing in a manner determined by the PHA and which ensures notice to all duly elected resident organizations. The public notice shall also include a summary of activities of the previous year (uses of past funding) and progress update, estimated funding level (*i.e.*, current year funding or formula amount, whichever the PHA elects); a summary of the CGP requirements; the estimated time frames for completion of the required CGP documents; and the requirement for resident participation in the planning, development and monitoring of modernization activities under the CGP;

(2) *Advance Meeting with residents.* The PHA shall at least annually hold a meeting open to all residents and duly elected resident organizations. The advance meeting shall be held within a reasonable amount of time before the public hearing under paragraph (d)(3) of this section. The PHA will provide residents with information concerning the contents of the PHA's Five-Year Action Plan (and any proposed amendments to the PHA's Comprehensive Plan to be submitted with the Annual Submission) so that residents can comment adequately at the public hearing on the contents of the Five-Year Action Plan and any proposed amendments to the Comprehensive Plan.

(3) *Public hearing.* The PHA shall annually hold at least one public hearing, and any appropriate number of additional hearings, to ensure ample opportunity for residents of the developments covered by the Comprehensive Plan, officials of the appropriate governing body, and other interested parties, to express their priorities and concerns and discuss the current status of prior approved programs. The PHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties in developing its Five-Year Action Plan, or any amendments to its Comprehensive Plan.

(4) *Expedited scheduling.* PHAs are encouraged to hold the meeting with residents and duly elected resident organizations under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section between July 1 (*i.e.*, after the end of the program year—June 30) and September 30, using the formula amount for the current FFY. If a PHA elects to use such expedited scheduling, it must explain at the meeting with residents and duly elected resident organizations and at the public hearing that the current FFY amount is not the actual grant amount for the subsequent year, but is rather the amount used for planning purposes and preparing the draft Performance and Evaluation Report. It must also explain that the Five-Year Action Plan will be adjusted when HUD provides notification of the actual formula amount, and explain which items may be added or deleted to adjust for the formula amount and that any added items will come from the Five-Year Action Plan.

(e) *Contents of Work Statement.* The Work Statement for each year must include, for each development or on a PHA-wide basis for management improvements for which work is to be funded out of that year's grant:

(1) A list of development accounts with a general description of work items;

* * * * *

(8) A PHA resolution approving the Annual Submission or any amendments thereto, as set forth in § 968.320(d)(7).

(f) *Additional submissions with Annual Submission.* A PHA must submit with the Annual Submission any amendments to the Comprehensive Plan, as set forth in § 968.320(e), and such additional information as may be prescribed by HUD. HUD shall review any proposed amendments to the Comprehensive Plan in accordance with review standards under § 968.325(b).

(g) *HUD review and approval of Annual Submission*—(1) *General.* An Annual Submission accepted in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the PHA in writing, postmarked within 75 calendar days of the date that HUD receives the Annual Submission for review under paragraph (c) of this section, that HUD has disapproved the Annual Submission, indicating the reasons for disapproval, the modifications required to make the Annual Submission approvable, and the date by which such modifications must be received by HUD. HUD shall not disapprove an Annual Submission on the basis that the Department cannot complete its review under this section within the 75-day deadline;

(2) *Bases for disapproval for Annual Submission.* HUD shall approve the Annual Submission, except where:

(i) *Plainly inconsistent with Comprehensive Plan.* HUD determines that the activities and expenditures proposed in the Annual Submission are plainly inconsistent with the PHA's approved Comprehensive Plan;

* * * * *

(h) *Amendments to Annual Submission.* The PHA shall advise HUD of all changes to the PHA's approved Work Statement for year one in its Performance and Evaluation Report submitted under § 968.305. Any additional work items (changes which add work items), except for emergency work, must be within the PHA's approved Five-Year Action Plan or receive prior HUD approval.

(i) *Extension of time for performance.* A PHA may revise the target dates for fund obligation and expenditure in the approved Annual Submission whenever any valid delay outside the PHA's control occurs, as specified by HUD. Such revision is subject to HUD review under § 968.345(a)(2) as to the PHA's continuing capacity. HUD shall not review as to a PHA's continuing capacity any revisions to a PHA's Comprehensive Plan and related statements where the basis for the revision is that HUD has not provided the amount of assistance set forth in the Annual Submission, or has not provided such assistance in a timely manner.

(j) *ACC Amendment.* After HUD approval of each year's Annual Submission, HUD and the PHA shall enter into an ACC amendment to obtain modernization funds. The ACC amendment shall require low-income use of housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC).

(k) *Declaration of trust.* A PHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the PHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements.

(Approved by the Office of Management and Budget under control number 2577–0157)

22. Section 968.335 would be amended by revising paragraph (a) introductory text and paragraph (b), to read as follows:

§ 968.335 Conduct of modernization activities.

(a) *Initiation of activities.* After HUD has approved a Five-Year Action Plan and entered into an ACC amendment or grant agreement with the PHA for year one of the Plan, the PHA shall undertake the modernization activities and expenditures set forth in its approved Work Statement for year one or substitute work items from within the approved Five-Year Action Plan, subject to the following requirements:

* * * * *

(b) *Fund requisitions.* To request modernization funds against the Work Statement, the PHA shall comply with requirements prescribed by HUD.

* * * * *

23. Section 968.340 would be amended by revising paragraphs (a) and (b)(2); by removing paragraph (b)(3); by redesignating paragraphs (b)(4) through (b)(7) to read paragraphs (b)(3) through (b)(6), respectively; by revising the newly designated paragraphs (b)(4) and (b)(6); and by adding the OMB control number to the end of the section, to read as follows:

§ 968.340 PHA Performance and Evaluation Report.

(a) *Submission.* For any FFY in which a PHA has received assistance under this subpart, the PHA shall submit a Performance and Evaluation Report, in a form and at a time to be prescribed by HUD, describing its use of assistance in accordance with the approved Five-Year Action Plan. The PHA must make reasonable efforts to notify residents and officials of the appropriate governing body of the availability of the draft report, make copies available to residents in the development office, and provide residents with at least 30 calendar days in which to comment on the report.

(b) * * *

(2) An explanation of how the PHA has used the CGP funds to address the

needs identified in its Comprehensive Plan and to carry out the activities identified in its approved Five-Year Action Plan, and shall specifically address:

(i) Any funds used for emergency needs not set forth in its Five-Year Action Plan; and

(ii) Any changes to the Annual Submission under § 968.330;

* * * * *

(4) The current status of the PHA's obligations and expenditures and specifying how the PHA is performing with respect to its implementation schedules, and an explanation of any necessary revision to the planned target dates;

* * * * *

(6) A resolution by the PHA Board of Commissioners approving the Performance and Evaluation Report and containing a certification that the PHA has made reasonable efforts to notify residents in the development(s) and local government officials of the opportunity to review the draft report and to comment on it before its submission to HUD, and that copies of the report were provided to residents in the development office, to local government officials, or furnished upon their request.

24. Section 968.345 would be amended by revising paragraphs (a)(1)(i), (a)(1)(ii), (a)(2)(i)(A), and (a)(3)(ii); by adding a new paragraph (a)(3)(iii); by revising paragraphs (e)(2) and (e)(4); by redesignating paragraph (e)(7) to read paragraph (e)(8); by adding a new paragraph (e)(7); and by adding the OMB control number to the end of the section, to read as follows:

§ 968.345 HUD review of PHA performance.

(a) * * *

(1) * * *

(i) In making this determination, HUD will review the PHA's performance to determine whether the modernization activities undertaken during the period under review conform substantially to the activities specified in the approved Five-Year Action Plan. HUD will also review a PHA's schedules which are provided with its Annual Submission for purposes of determining whether the PHA has carried out its modernization activities in a timely manner;

(ii) HUD will review a PHA's performance to determine whether the activities carried out comply with the requirements of the Act, including the requirement that work carried out meets the modernization and energy conservation standards in § 968.115, this part, and other applicable laws and regulations. This review should also include a review of the PHA's section 3 (of the Housing and Urban Development Act of 1968) past performance.

(2) * * *

(i) * * *

(A) Carried out its activities under the CGP program, as well as the CIAP, in a timely manner, taking into account the level of funding available and whether the PHA obligates its modernization funds within two years from the execution of the ACC amendment and expends such modernization funds within three years of ACC amendment execution, or such longer period if agreed to by HUD in an implementation schedule, except in circumstances beyond the PHA's reasonable control.

* * * * *

(3) * * *

(ii) With respect to the management condition of the PHA, whether the PHA has achieved, or is making reasonable progress towards implementing the work items specified in its annual submission and Five-Year Action Plan which are designed to address deficiencies identified through PHMAP, audits, or HUD reviews; and

(iii) In determining whether the PHA has made reasonable progress, HUD will take into account the level of funding available and whether the PHA obligates its modernization funds within two years from the execution of the ACC amendment and expends such modernization funds within three years of ACC amendment execution, or such longer period if agreed to by HUD in an implementation schedule. The PHA must demonstrate to HUD's satisfaction that any lack of timeliness (beyond the time periods specified in this paragraph or date specified in a HUD approved implementation schedule) has resulted from factors beyond the PHA's reasonable control.

* * * * *

(e) * * *

(2) Submit schedules for completing the work identified in its Work Statements and report periodically on its progress on meeting the schedules;

* * * * *

(4) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the PHA's Comprehensive Plan, Five-Year Action Plan, or Performance and Evaluation Report;

* * * * *

(7) Submit to an alternative management strategy which may involve third-party oversight or administration of the modernization function (see § 968.315(d)); and

* * * * *

(Approved by the Office of Management and Budget under control number 2577–0157)

Dated: March 2, 1994.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–5146 Filed 3–7–94; 8:45 am]

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March 8, 1994

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Designation of Critical Habitat for the Threatened Loach Minnow and Spikedace; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC24

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Threatened Loach Minnow (Tiaroga cobitis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) designates critical habitat for the loach minnow (*Tiaroga cobitis*) under the authority of the Endangered Species Act of 1973, as amended (Act). The loach minnow, a small fish, was listed as a threatened species under the Act on October 28, 1986 (51 FR 39468); however, final designation of the proposed critical habitat was postponed at that time. Critical habitat is now being designated in approximately 257 kilometers (km) (159 miles (mi)) of portions of the Gila River in Grant and Catron counties, New Mexico; the San Francisco and Tularosa rivers and Dry Blue Creek, Catron County, New Mexico; the San Francisco and Blue rivers and Campbell Blue Creek, Greenlee County, Arizona; and Aravaipa Creek in Graham and Pinal counties, Arizona. Federal actions that may affect the areas designated as critical habitat are now subject to consultation with the Service, pursuant to section 7(a)(2) of the Act.

DATES: The effective date of this rule is April 7, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Arizona Ecological Services Office, U.S. Fish and Wildlife Service, 3616 West Thomas, Suite 6, Phoenix, Arizona 85019. Copies of the "Analysis of the Economic Impacts of Designating Critical Habitat for *Tiaroga cobitis* (Loach Minnow)," August 12, 1992, are also available for inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Sally Stefferud at the above address (602/379–4720).

SUPPLEMENTARY INFORMATION:

Background

The loach minnow is a small, slender, elongated fish less than 80 millimeters (3 inches) long. It is olivaceous in color with an oblique terminal mouth and eyes markedly upward-directed. This species is found in small to large perennial streams, using shallow, turbulent riffles with primarily cobble substrate and swift currents (Minckley 1973, Propst *et al.* 1988, Rinne 1989, Propst and Bestgen 1991). Recurrent flooding is very important to loach minnow survival in keeping the substrate free of embedding sediments and helping it maintain a competitive edge over invading non-native fish species (Minckley and Meffe 1987, Propst *et al.* 1988).

The loach minnow was first collected in 1851 from the Rio San Pedro in Arizona, and was described from those specimens in 1856 by Girard. The loach minnow was once locally common throughout much of the Verde, Salt, San Pedro, San Francisco, and Gila (upstream from Phoenix) River systems, occupying suitable habitat in both the mainstreams and perennial tributaries, up to about 2,200 meters (m) (7,200 feet (ft)) elevation. Because of habitat destruction and competition and predation by non-native fish species, its range and abundance have been severely reduced. It is now restricted to approximately 35 km (22 mi) of Aravaipa Creek and approximately 1.5 km (1 mi) of Turkey Creek, a tributary of Aravaipa Creek, Graham and Pinal counties, Arizona; approximately 120 km (74.5 mi) of the upper Gila River, upstream from the Middle Box canyon, through the Cliff/Gila Valley, and the area of the confluence of the West, East, and Middle forks, Grant and Catron counties, New Mexico; approximately 166 km (103 mi) of the San Francisco and Tularosa rivers, Catron County, New Mexico; approximately the lower 1.5 km (1 mi) of Whitewater Creek, a tributary of the San Francisco River, Catron County, New Mexico; approximately 95 km (59 mi) of the Blue River and Campbell Blue and Dry Blue creeks, Greenlee County, Arizona; and 38 km (23.5 mi) of the East and North forks and mainstem of the White River, Navajo County, Arizona (Barber and Minckley 1966, Silvey and Thompson 1978, U.S. Department of Agriculture 1979, Britt 1982, Propst *et al.* 1985, Propst *et al.* 1988, Propst 1988 to 1992, Papoulius 1989, Minckley *et al.* 1990 to 1992, Propst and Bestgen 1991, Bettaso 1992 to 1993). This present range is only 17 percent of the historic range of 2,600 km (1,600 mi) of river.

Critical habitat is being designated for approximately 257 km (159 mi) on rivers currently occupied by loach minnow. Land ownership along the critical habitat area is mixed and is as follows (distances and conversions are approximate):

Aravaipa Creek—The Bureau of Land Management (BLM) administers 10 km (6 mi) of the critical habitat as part of the designated Aravaipa Canyon Wilderness. Thirteen km (8 mi) of the critical habitat above and below the Wilderness, previously owned by the Defenders of Wildlife's Whittell Trust, is now owned by The Nature Conservancy (TNC) and managed as a nature preserve. About 1 km (0.5 mi) of stream is on privately owned inholdings located within the Preserve.

Gila River—Twenty-eight km (17.2 mi) of privately owned land lie along the critical habitat in most of the Cliff/Gila Valley, in the area near Gila Hot Springs, and along the East Fork. Two km (1.2 mi) of land along the critical habitat upstream from the town of Gila is owned by TNC. The New Mexico Department of Game and Fish owns land along 6 km (3.8 mi) of the critical habitat on the West and Middle forks of the Gila River. The New Mexico State Land Office owns land along 0.5 km (0.2 mi) of the critical habitat in the Cliff/Gila Valley. The National Park Service's Gila Cliff Dwellings National Monument lies along 1 km (0.5 mi) of the critical habitat on the West Fork. This Monument is currently being administered by the U.S. Forest Service. The U.S. Forest Service, Gila National Forest, administers the remaining 55.5 km (34 mi) of the critical habitat in the Gila River with sections flowing through three special use areas—the Gila Wilderness, the Lower Gila River Bird Habitat Management Area, and the Gila River Research Natural Area.

San Francisco and Tularosa Rivers—The Gila National Forest administers 27 km (16.8 mi) of the two rivers in the critical habitat. Privately owned lands occur as scattered inholdings in National Forest lands along 18 km (11.2 mi) of the critical habitat in both rivers.

Blue River and Campbell and Dry Blue Creeks—The critical habitat is almost entirely contained within the Apache-Sitgreaves National Forest, with 75 km (46.5 mi) of forest lands and 20 km (12.5 mi) of private inholdings.

The loach minnow is included on the State lists of threatened and endangered species in Arizona and New Mexico (Arizona Game and Fish Dept. 1988, New Mexico State Game Comm. 1990). It was included as a Category 1 candidate species in the Service's December 30, 1982, Vertebrate Notice of Review (47 FR 58454). Category 1 includes those taxa for which the Service currently has substantial biological information on hand to support listing the species as endangered or threatened. A proposed rule to list this species as threatened

with critical habitat was published on June 18, 1985 (50 FR 25380). The final rule listing the loach minnow as a threatened species was published on October 28, 1986 (51 FR 39468). The proposed critical habitat designation was not made final at the time of listing but was postponed to allow for gathering and analysis of economic data.

Summary of Comments and Recommendations

In the June 18, 1985, proposed rule (50 FR 25380) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The original comment period closed on August 19, 1985, but was reopened on October 7, 1985 (50 FR 37703), to accommodate the public hearings, and remained open until November 8, 1985. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comment were published in the Courier in Prescott, Arizona; in the Eastern Arizona Courier in Safford, Arizona; and in the Daily Press in Silver City, New Mexico, on July 5, 10, and 13, 1985, respectively. One hundred eleven letters of comment were received from 108 separate parties and are summarized below. Six requests for a public hearing were received. Public hearings were held in Silver City, New Mexico; Safford, Arizona; and Phoenix, Arizona, on October 7, 8, and 9, 1985, respectively. Interested parties were notified of those hearings, and notices of the hearings were published in the **Federal Register** on September 17, 1985 (50 FR 37703); in the Silver City, New Mexico, Daily Press on September 24, 1985; in the Phoenix, Arizona, Arizona Republic on September 26, 1985; in the Prescott, Arizona, Courier on September 27, 1985; and in the Safford, Arizona, Eastern Arizona Courier on October 2, 1985. Thirty-five comments pertaining to the proposed critical habitat were received at these hearings and are also summarized below.

Seventy-seven letters of comment were received in support of the proposed critical habitat, 21 in opposition to the proposal, and an additional 13 which expressed neither support nor opposition or which furnished economic information regarding the effects of the proposal. The 3 public hearings were attended by 107 people, with 32 oral or written statements given—16 in support of the proposed critical habitat, 13 in opposition, and 3 neither in support nor opposition. In addition, three other parties asked questions regarding the proposed critical habitat. The hearings accepted formal oral and written statements and also included an informal question and answer session.

Many of the comments addressed concerns regarding specific water-development or flood-control projects. These comments will not be addressed here unless they requested or resulted in specific changes to the rule or to the rule procedure. Economic information supplied in these comments was incorporated into the economic analysis on proposed critical habitat (Souder 1992). That analysis is available upon request, as are copies of hearing transcripts and all letters received during the comment period (see **ADDRESSES** section).

Comments in support of the proposed critical habitat were received from the American Society of Ichthyologists and Herpetologists, Arizona Game and Fish Department, Arizona Nature Conservancy, Arizona State University Wildlife Society Chapter, Arizona Wildlife Federation, Audubon Society Appleton-Whittell Research Ranch, Defenders of Wildlife, Desert Fishes Council, George Whittell Wildlife Trust, International Union for the Conservation of Nature and Natural Resources (now known as the World Conservation Union), Maricopa Audubon Society, New Mexico Nature Conservancy, Northern Arizona Paddlers Club, Prescott Audubon Society, Rio Grande Chapter of the Sierra Club, Southern New Mexico Conservation Coalition, Southern New Mexico Sierra Club, The Nature Conservancy's Rocky Mountain Natural Heritage Task Force, Tucson Audubon Society, U.S. Bureau of Land Management, Yuma Audubon Society, 3 members of the New Mexico Interstate Stream Commission, and 63 biologists and private citizens.

Comments in opposition to the proposed critical habitat were received from the Arizona Cattle Growers Association, Arizona Division of Emergency Services, Arizona Mining Association, City of Prescott, Congressman Jim Kolbe of Arizona, Coronado Resource Conservation and Development Board, County of Greenlee, Gila Fish and Gun Club, Gila Valley Natural Resource Conservation Board, Graham County Board of Supervisors, Grant County Chamber of Commerce, Hooker Dam Association, New Mexico State Engineer Office, Phelps Dodge Corporation, Pleasanton Eastside Ditch Company, Southwest New Mexico Industrial Development Corporation, Town of Safford, Town of Silver City, Town of Thatcher, U.S. Forest Service, U.S. Soil Conservation Service New Mexico State Office, Upper Gila River Association, and six private citizens.

Nonsubstantive comments or comments containing only economic information were received from the Arizona State Clearinghouse, Federal Emergency Management Agency, Federal Highway Administration, New Mexico Game and Fish Department, U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, U.S. Environmental Protection Agency, U.S. Soil Conservation Service Arizona State Office, and two private citizens.

Summaries of all substantive comments addressing the issue of critical habitat for the loach minnow are provided in the following discussion. Comments of similar content are grouped in a number of general issues with the Service's response to those issues and comments.

Issue 1: Three commenters recommended that additional areas be included in the designation of critical habitat. Two commenters recommended that the critical habitat designation be changed to include the watersheds of the rivers being designated, as well as the rivers themselves.

Dr. Dean Hendrickson questioned why the proposed critical habitat does not include several areas where loach minnow occur in the San Francisco River (above the mouth of the Blue River) nor the population in the White River

Response: The Service believes that the inclusion of the entire watershed in a critical habitat designation for this fish is not necessary to provide adequate protection for the species. However, the Service recognizes the importance of the watersheds in maintaining quality habitat for the loach minnow. Any Federal activities in the watersheds of streams designated as critical habitat that would affect the critical habitat would be subject to section 7 of the Act. The Service recognizes that limiting the proposed critical habitat to only the stream itself may not clearly indicate the importance of the streambanks and channel to the maintenance of the critical habitat. Therefore, future revision of the critical habitat to include a portion of the riparian zone or floodplain may be considered. Such a revision would require an additional proposed rule and public comment period.

The Service is considering future revision of the critical habitat designation for loach minnow to include other areas occupied by the species as well as unoccupied areas that

may be critical to recovery of the species. The population in the White River was believed to have been extirpated at the time of the proposed designation of critical habitat and was therefore not included in the proposal. Additional information on the distribution and status of the White River habitat and population is now available and the Service believes that portions of the East and North forks and mainstem White River may qualify for addition to the critical habitat designation. Populations of loach minnow found in the areas of stream not included in the critical habitat are nevertheless protected under the jeopardy provisions of section 7 and the prohibitions of section 9 of the Act.

Issue 2: Four of the commenters recommended that the area of the Gila River that was being considered in 1985 for damming or other water development under the Bureau of Reclamation's (Reclamation) Upper Gila Water Supply Study (UGWSS) be excluded from the critical habitat designation. Such an exclusion could be made under the provisions of section 4(b)(2) of the Act, which provides that the Secretary of the Interior may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as critical habitat, unless the failure to designate such area as critical habitat would result in the extinction of the species. The four commenters stated that the benefits of the water supply, flood control, and other associated economic and recreational benefits of the UGWSS, and Conner Dam in particular, far outweigh the benefits of critical habitat. One commenter also suggested that areas presently unoccupied by loach minnow in the Gila River and other streams could be designated as critical habitat to replace the excluded UGWSS area. The commenter suggested that such unoccupied areas could then be modified and managed to provide habitat for loach minnow and then stocked with captive-reared loach minnow to provide increased populations and habitat for the species.

Response: Planning for the UGWSS was suspended in 1987 (U.S. Bureau of Reclamation 1987a, 1987b) due to various economic, environmental, and water supply factors. Further planning was deferred until the year 2010 when it is predicted the need for the water supply will occur. Prior to that suspension, discussions between the Bureau of Reclamation and the Service on tentative alternatives for the UGWSS study indicated that development of the required water supply would likely be possible without adversely modifying the proposed critical habitat. Therefore, no economic or other impacts were anticipated to the UGWSS and no economic benefits would accrue from exclusion from critical habitat designation of the Conner Dam and Reservoir area, or any other area being considered under the UGWSS.

Regarding the suggestion to replace occupied areas in the critical habitat designation with unoccupied areas of the Gila River—the Service is considering a possible future revision to the critical habitat which may contain some presently unoccupied areas as potential recovery habitat. However, this would be an addition to the critical habitat, not a substitution. The Service does not believe it would further the conservation of the species to remove from the protection of critical habitat designation areas known to support long-term populations of loach minnow and replace them with areas which do not currently support loach minnow, but which, with human manipulation, might support loach minnow in the future. However, the primary unoccupied area identified by the commenter as a replacement for the occupied areas is the canyon wilderness between Mogollon Creek and the East Fork Gila River (above the Cliff/Gila Valley), which probably never supported loach minnow and does not appear to contain potential habitat for recovery of the species. The knowledge, expertise, and physical capability do not exist to modify such areas of non-suitable habitat into suitable habitat for loach minnow. In addition, such modification might cause major irreparable harm to other native fish and aquatic organisms, riparian plant and wildlife communities, and wilderness values.

Issue 3: Two commenters requested that critical habitat be limited to areas that would not hinder the construction of flood-control facilities for the areas of Clifton, Duncan, and Safford, Arizona. As in Issue 2, this request for exclusion of specific areas was made under the provisions of section 4(b)(2) of the Act.

Response: The economic analysis (Souder 1992) did not show there to be significant economic or other benefits of excluding any area for flood control. Such a limitation of critical habitat is not expected to be necessary to allow for flood-control measures on the Gila and San Francisco rivers. Any such projects or activities, if they are federally funded, authorized, or carried out, would be subject to the provisions of section 7 regarding both the survival of the loach minnow and the adverse modification or destruction of its critical habitat. The Service expects that alternatives and plan modifications formulated through consultation will allow adequate flood-control measures to be taken while safeguarding the species and its habitat.

Issue 4: One commenter recommended limiting designated critical habitat to areas that would not prevent the stocking of sport fish. The commenter pointed out that many of the non-native fish identified as predators on loach minnow, such as catfish and trout, provide recreation for local residents and create revenue from sport fishing recreation. As in Issues 2 and 3, this request for exclusion of specific areas is made under the provisions of section 4(b)(2) of the Act.

Response: The designation of critical habitat as proposed is not expected to have significant effects on recreational fishing. The Arizona Game and Fish Department (AGFD) does not stock game fish in any of the waters proposed as critical habitat for loach minnow. The New Mexico Department of Game and Fish (NMGF) stocks only rainbow trout (*Oncorhynchus mykiss*) into or near the critical habitat for loach minnow. Game fish are being stocked by AGFD, NMGF, and the Service into waters connected to the proposed critical habitat. These stockings must comply with section 7 consultation requirements for their effects on the loach minnow, and designation of critical habitat is not expected to change the outcome of those consultations.

Issue 5: The Pleasanton Eastside Ditch Company, of Glenwood, New Mexico, requested that its stretch of river be excluded from critical habitat.

Response: The Pleasanton area of the San Francisco River was not part of the proposed designation of critical habitat and is not a part of this final designation. Therefore, no exclusion can or need be made.

Issue 6: Three commenters recommended that various management techniques, such as habitat improvements, predator control, and reintroduction of loach minnow from the Service's Dexter National Fish Hatchery, be implemented for loach minnow in lieu of listing and designating critical habitat.

Response: Habitat improvement practices, including predator control, cannot substitute for the listing of a species which meets the criteria for threatened or endangered status or for designation of its critical habitat, unless such practices will alleviate all threats to the species to the point where it no longer requires listing or critical habitat designation. Many of the threats to the loach minnow cannot be alleviated by

habitat improvements but can be controlled through designation of critical habitat and through the provisions of sections 7 and 9 of the Act. Too little is known about the specific habitat needs of the loach minnow to ensure that habitat improvement practices and reintroductions would secure the survival of this fish. Habitat enhancement and reintroduction are measures that are being considered in the recovery of this species. Extensive study will be needed to ensure the success of such work.

The Dexter National Fish Hatchery does not presently maintain stocks of loach minnow. Facility space is limited, and priority is given to species whose survival depends heavily upon artificial propagation, a point the loach minnow has not yet reached. Placement of stocks of loach minnow into that facility may be considered in the future; however, a number of years are often needed to develop the techniques required to successfully propagate a given species in captivity, thus precluding use of captive stock in alleviating the immediate need for listing and critical habitat designation. In addition, reintroductions may be more likely to succeed if the reintroduction area is protected through designation as critical habitat.

Issue 7: A commenter expressed concerns regarding the value of designating critical habitat when there is a significant threat to the loach minnow from predatory and competitive non-native fish species. The commenter believed that the designation of critical habitat without a management and statutory effort to control undesirable introduced fish species is not justified.

Response: The existence of threats to a listed species from other organisms, such as non-native fishes, does not relieve the Service of its responsibility to protect the species' habitat. The loach minnow faces extensive threats to its habitat and will benefit from the designation of critical habitat. The Service is presently working with the State Game and Fish departments and other agencies on solutions to controlling the introduction and spread of non-native fish species, including game fish.

Issue 8: Three commenters objected to the deferral of analysis of economic and other impacts of critical habitat designation until the time of the final rule. They believed such analysis should be done prior to the proposal and contended that deferral is "improper both legally, procedurally and in failing to follow reasonable and necessary rulemaking steps," is "certainly unreasonable and probably illegal," and does not allow the public access to essential information needed to comment on the impacts and review the adequacy of the Service's analysis. They further contended that a Regulatory Impact Analysis, under Executive Order 12291, must be prepared for the critical habitat proposal.

Response: The economic analysis (Souder 1992) of the proposed loach minnow critical habitat designation was prepared following the publication of the proposed rule and prior to the final decision on the proposed critical habitat designation. This procedure is based upon the specific requirement of the Act exempting listing actions from economic considerations. When a listing and critical habitat designation are proposed concurrently, as is required (with certain exceptions) by the Act, the economic analysis is not conducted prior to proposal to avoid illegally influencing or delaying the listing. Because Executive Order 12291 was rescinded on September 30, 1993 (58 FR 51735), a Regulatory Impact Analysis is not required.

Issue 9: Three commenters stated that an Environmental Impact Statement (EIS), under the National Environmental Policy Act (NEPA), should be prepared for this critical habitat proposal. They contended that the 1981 6th Circuit Court of Appeals' *Pacific Legal Foundation* v. *Andrus* decision, which found that an EIS is not required for listings under the Endangered Species Act, is not applicable to the current critical habitat proposal. Their reasons for this contention include—the *Pacific Legal Foundation* v. *Andrus* decision addressed only listing and not critical habitat designation, the Act now requires the consideration of economic and other relevant impacts of specifying an area as critical habitat, and the Act also now requires the Secretary of the Interior to determine whether the benefits of excluding an area from critical habitat designation outweigh the benefits of specifying such area as part of the critical habitat.

Response: The Service's position on NEPA compliance for any regulations adopted pursuant to section (4)(a) of the Act (listing, critical habitat designation, reclassification, delisting) is set forth in the **Federal Register** of October 25, 1983 (48 FR 49244). In addition to *Pacific Legal Foundation* v. *Andrus*, the Service's position on NEPA compliance is based on the recommendation of the Council on Environmental Quality, the fact that the Act stipulates a process to be followed in promulgating such rules and limits Secretarial discretion in altering the critical habitat designation, and on the experience of 10 years of preparation of Environmental Assessments on section 4(a) actions. In those 10 years, 120 Environmental Assessments were prepared, none of which resulted in a finding of significant impact and consequent preparation of an EIS.

Analysis of economic impacts for critical habitat designations is required by Executive Order 12866 and section 4(b)(2) of the Endangered Species Act, and the Service has prepared an economic analysis in compliance with those authorities. When the economic analysis is added to the administrative record generated through the public comment process, it provides the functional equivalent of NEPA documentation and satisfies the information-gathering, analytical, and environmental goals of NEPA.

Issue 10: Three commenters recommended that, in assessing the economic impacts of proposed critical habitat, the Service should consider the cumulative effects of all past species listings and critical habitat designations and all such actions that are or may be under consideration in the area to be affected by proposed critical habitat. They believed that the economic effects caused by past and future actions for other species are relevant in determining economic and other impacts in the proposed critical habitat area.

Response: In assessing the impacts of a critical habitat designation, the Service considers in its baseline the cumulative effects resulting from earlier listings and critical habitat designations to the extent that such effects can be determined. Effects of this critical habitat designation were calculated incrementally above the baseline of other species listings and critical habitat, as well as other environmental and land-management regulations. Consideration is limited to known impacts and does not include theoretical or hypothetical impacts. Currently, the only other federally listed species present in streams in which the loach minnow is found are the threatened spikedace (*Meda fulgida*) and endangered razorback sucker (*Xyrauchen texanus*). The endangered bald eagle (*Haliaeetus leucocephalus*) occurs near some loach minnow habitat but is not expected to contribute to cumulative effects for the loach minnow. No existing critical habitat designations are located in any of the areas being designated as loach minnow critical habitat. Designation of critical habitat in areas of loach minnow-

occupied streams and adjacent floodplains and riparian vegetation has been proposed for the spikedace and the southwestern willow flycatcher (*Empidonax traillii extimus*). Expected impacts of designation for the flycatcher are not yet available but will be detailed in the economic analysis for that proposal. Expected impacts of designation for the spikedace become available with the publication of final critical habitat for that species, concurrent with this rule (in this separate part of the **Federal Register**). Cumulative effects may be expected only in areas of non-overlap where alternative sites for projects may be affected by one species in one area and the other species in other areas or from differences in constituent elements for the southwestern willow flycatcher as compared to the fishes.

Issue 11: One commenter questioned the inclusion of the Middle Box in proposed critical habitat. The commenter based the question on a report by the Service's Albuquerque Ecological Services Field Office (USFWS 1985), which stated that the area of the Middle Box (proposed site of Conner Dam and Reservoir) has the lowest habitat value for aquatic species and general ecology in the portion of the Gila River from Mogollon Creek downstream through the Red Rock area. The report also stated that the greatest habitat value to the native fishes is found in the Cliff/Gila/Riverside Valley. That valley has a large concentration of existing manmade structures. The commenter asked for a clarification of the apparent contradiction between the low habitat rating of the Middle Box and its inclusion in the proposed critical habitat, and of the apparent contradiction between the high habitat rating of the Cliff/Gila/ Riverside Valley and the statements in the proposed rule regarding the adverse effects of human activities on loach minnow habitat.

Response: The Middle Box does provide less overall general aquatic habitat quality and diversity than other stretches. The critical habitat proposed for the loach minnow does not include any of the Middle Box proper; however, the upper end of the Middle Box "reach" (as defined by the 1985 Service report) supports a large number of loach minnow. That area is included in the critical habitat. The comparatively high habitat value of the Gila/Cliff/ Riverside Valley is not inconsistent. All manmade structures are not equally destructive of habitat values. Most of the structures in the Gila/Cliff/Riverside area are small and have localized impacts on the aquatic habitat. In the localized areas of those impacts, loach minnow are scarce or do not exist.

Issue 12: The Graham County (Arizona) Manager asked if the designation of critical habitat will affect the availability of Federal money for studies by the Bureau of Reclamation and U.S. Army Corps of Engineers on dam projects in the area.

Response: Designation of critical habitat will not automatically alter or stop any studies or projects in the area. Rather, any project that is federally funded, authorized, or carried out will be subject to the provisions of section 7 of the Act. These provisions are explained in this final rule. Studies or projects can be carried out by the Bureau of Reclamation or Corps of Engineers if those studies or projects do not destroy or adversely modify critical habitat or jeopardize any listed species.

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the loach minnow (*Tiaroga cobitis*) in the following areas (distances and conversions are approximate):

1. Aravaipa Creek, Graham and Pinal counties, Arizona. Twenty-four km (15 mi) of stream extending from the N½ of the SW¼ sec. 26, T.6S., R.17E. upstream to the W½ of the NE¼ sec. 35, T.6S., R.19E.

2. Gila River, Grant and Catron counties, New Mexico. Four sections of river totaling 93 km (57 mi) in length. The first section is 37 km (23 mi) long and extends from the north side of St. Peter's Rock (south boundary of sec. 21, T.17S., R.17W.) upstream to the confluence with Mogollon Creek. A second section, of 11.5 km (7 mi), extends up the West Fork from its confluence with the East Fork to the west boundary of sec. 22, T.12S., R.14W. A third section, of 18 km (11 mi), extends up the Middle Fork from its mouth to the confluence with Brothers West Canyon. The fourth section is 26 km (16 mi) long and extends up the East Fork from the confluence with the West Fork to the north boundary of sec. 11, T.12S., R.13W.

3. San Francisco River, Catron County, New Mexico, and Greenlee County, Arizona. Two sections of river totaling 21 km (13 mi) in length. The first section is 15 km (9 mi) long and extends from the U.S. Highway 180 bridge upstream to Kelly Flat. The other section is 6 km (4 mi) long and extends from the confluence with Hickey Canyon upstream to the confluence with the Blue River.

4. Tularosa River, Catron County, New Mexico. Twenty-four km (15 mi) of river from the confluence with Negrito Creek upstream to the town of Cruzville.

5. Blue River, Greenlee County, Arizona, and Catron County, New Mexico. Seventy-eight km (48 mi) of river from its confluence with the San Francisco River upstream to the confluence of Dry Blue Creek and Campbell Blue Creek.

6. Campbell Blue Creek, Greenlee County, Arizona, and Catron County, New Mexico. Fourteen km (9 mi) of stream from its junction with Blue River upstream to the confluence with Coleman Creek.

7. Dry Blue Creek, Catron County, New Mexico. Three km (2 mi) of stream from its confluence with the Blue River upstream to the springs located in sec. 32, T.6S., R.21W.

The Service is required to base critical habitat proposals on the best available scientific information (50 CFR 424.12). In determining what areas to propose as critical habitat, the Service considers those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, the following—(1) space for individual growth; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

The areas being designated as critical habitat for the loach minnow possess the necessary factors for survival, growth, and reproduction of the species. Several areas currently occupied by the loach minnow were not included in the 1985 proposal for various reasons.

Although these areas were not proposed for designation as critical habitat, they are considered important for the long-term survival and recovery of the loach minnow. The Service is considering revising critical habitat in the future to add these areas. In addition, the Service is considering adding certain unoccupied areas considered vital for recovery of the species.

Maintenance of the widely separated populations found in the Gila, San Francisco, Tularosa, White and Blue rivers and in Aravaipa Creek as independent entities is critical to buffer against threats to each individual population. Each of the remnant populations proposed for critical habitat designation has unique characteristics which contribute to ensuring this species' future. Genetic studies in progress indicate that the populations are genetically distinctive (Tibbets 1992). The Aravaipa Creek population is the only remnant of the south-central portion of the loach minnow's historic range and is under the most protective land management. The Blue River (including Campbell and Dry Blue creeks and the San Francisco River below the mouth of the Blue) is remote and at present is also relatively secure from major threats, although damaged by past degradation. It is the longest stretch of occupied loach minnow habitat unbroken by large areas of unsuitable habitat. The West and Middle forks of the Gila River have a relatively low degree of habitat threat and may contribute genetically to the Cliff/Gila Valley population. The Cliff/Gila population is the largest existing population of loach minnow and, although faced with numerous threats, may represent the "core" population of the species. Habitat losses in the San Francisco and Tularosa rivers have resulted in a highly fragmented loach minnow population in those streams; however, the distribution of remaining habitat in those rivers may provide valuable information on habitat requirements of the loach minnow and the causes of the loach minnow's decline.

When designating critical habitat for a species, the Service also considers primary constituent elements of critical habitat, which may include, but are not limited to, the following—roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types. The areas being designated as critical habitat for loach minnow will provide the following constituent elements or will be capable, with rehabilitation, of providing them. Loach minnow constituent elements have been expanded from the proposed rule. The primary constituent elements include:

—Permanent, flowing, unpolluted water;
—Habitat for adult fish with moderate to swift flow velocities (15–100 centimeters (cm) (0.5–3 ft) per second) in shallow water (3–40 cm (0.1–1.5 ft) deep) with gravel, cobble, and rubble substrates;
—Habitat for juveniles with moderate to swift flow velocities (15–100 cm (0.5–3 ft) per second) in shallow water (3–40 cm (0.1–1.5 ft) deep) with sand, gravel, cobble, and rubble substrates;
—Habitat for larval stage with slow to moderate flow velocities (0–30 cm (0–1 ft) per second) in shallow water (3–30 cm (0.1–1 ft) deep) with sand, gravel, and cobble substrates and abundant instream cover;
—Habitat for spawning with slow to swift flow velocities (3–85 cm (0.1–2.75 ft) per second) in shallow water (3–30 cm (0.1–1 ft) deep) with uncemented cobble and rubble substrate;
—Low amounts of fine sediment and substrate embeddedness;
—Riffle, run, and backwater components in the habitat;
—Low to moderate stream gradient (generally 0.5–1.5 percent);
—Water temperatures in the approximate range of 4–30° C (40–85° F) with natural diurnal and seasonal variation;
—Abundant aquatic insect food base;
—Periodic flooding;
—A natural, unregulated hydrograph;
—Few or no predatory or competitive non-native species present;
—A healthy, intact, riparian community; and
—Moderate to high bank stability.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Any activity that would lessen the amount of the minimum flow or would alter the natural flow regime in Aravaipa Creek or the San Francisco, Tularosa, Blue, or upper Gila rivers could adversely affect the critical habitat. Such activities include, but are not limited to, groundwater pumping, impoundment, and water diversions. Any activity that would alter watershed characteristics of the Aravaipa Creek or upper Gila, San Francisco, Tularosa, or Blue River watersheds could adversely affect the critical habitat. Such activities include, but are not limited to, vegetation manipulation, timber harvest, road construction, prescribed burning, livestock grazing, mining, and urban or suburban development. Any activity that would alter the channel morphology in Aravaipa Creek, the San Francisco, Tularosa, Blue, or upper Gila rivers could adversely affect the critical habitat. Such activities include, but are not limited to, channelization, impoundment, deprivation of substrate source, destruction and alteration of riparian vegetation, and excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed disturbances. Any activity that would alter the water chemistry in Aravaipa Creek or the San Francisco, Tularosa, Blue, or upper Gila Rivers could adversely affect the critical habitat. Such activities include, but are not limited to, release of chemical or biological pollutants into the waters at a point source or by dispersed release (non-point). Any activity that would introduce, spread, or augment non-native fish species in the Gila River basin could adversely affect the critical habitat. Such activities include, but are not limited to, stocking of game fish, use of live bait fish, stocking for biological control, aquaculture, dumping of pet or aquarium fish, construction and operation of canals, and interbasin water transfers.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of all additional relevant information obtained during the public comment period and public hearings. All additional information received has been addressed in the "Summary of Comments" section of this rule or in the economic documents prepared on the rule. The economic analysis (Souder 1992) is available upon request; its conclusions are summarized in the "Summary of Economic Analysis" section of this rule.

Available Conservation Measures

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat. 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 destroy or adversely modify its critical habitat. If a Federal action may affect the listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

No Federal activities on Bureau of Land Management lands on Aravaipa Creek are expected to be affected by designation of critical habitat for loach minnow. The Aravaipa Canyon Wilderness is presently being managed to protect and enhance natural resource values, including loach minnow. However, if existing or increased recreational use within the canyon results in streambank degradation and increased sediment or pollution load in the stream, then section 7 consultation may be necessary.

On U.S. Forest Service lands on the Gila, San Francisco, Tularosa, and Blue rivers, little effect on Federal activities is expected as a result of this rule. Section 7 consultations for grazing, mining, timber harvest, recreation, or other activities affecting loach minnow critical habitat would now address effects to the critical habitat in addition to effects to the loach minnow itself. The primary effect anticipated by the U.S. Forest Service is possibly increased administrative costs due to consultation requirements. Designation of critical habitat may result in some increases in mitigation needs for various land use activities.

Water development on the upper Gila River, under the Bureau of Reclamation's Central Arizona Project (CAP), Upper Gila Water Supply Study, may be affected by this rule. An informal conference (USFWS 1986) and an uncompleted formal consultation pursuant to section 7 have been conducted on this CAP project and its likelihood to jeopardize the survival of the loach minnow and adversely modify the proposed critical habitat. No current proposals exist for CAP water development in any areas of the designated critical habitat. The potential for designation of critical habitat to affect future water-development plans is dependent upon the level and type of adverse effects to the loach minnow and its habitat. Those effects would depend upon the location, size, method, and other specifics of the proposed water development. If major adverse effects on critical habitat are expected, changes in water-development plans may be required. However, only those changes in addition to any changes required as a result of section 7 consultation on the species would be attributable to critical habitat.

Known Federal activities on private lands that might be affected by this rule would be future flood control funded by the Federal Emergency Management Agency or carried out by the Soil Conservation Service or the U.S. Army Corps of Engineers, future highway and bridge construction funded, authorized, or carried out by the Federal Highway Administration, or future federally funded irrigation projects. Private activities within the stream channels that may require permits under sections 402 and 404 of the Clean Water Act may also be affected by this rule. Effects are expected to be limited to administrative costs for section 7 consultation and costs for altering proposed projects to minimize or avoid effects to loach minnow and its critical habitat.

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental 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).

Regulatory Flexibility Act and Executive Order 12866

This final rule has been reviewed under Executive Order 12866. The Department of the Interior has determined that designation of critical habitat for the loach minnow 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.*). Based on the information discussed in this rule concerning public projects and private activities within the critical habitat areas, it is not expected that significant economic impacts will result from the critical habitat designation. In addition, there are a limited number of actions on private land that have Federal involvement through funds or permits that would affect or be affected by the critical habitat designation; the potential economic impact of the critical habitat designation on these actions will be minor. Also, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by this designation. This action does not impose any recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

Summary of Economic Analysis

Section 4(b)(2) of the Act requires the Service to designate critical habitat on the basis of the best scientific data available and to consider the economic impact and any other relevant impact of specifying any particular area as critical habitat. The Secretary of the Interior (Secretary) may exclude any area from critical habitat if he determines that the benefits of such exclusions outweigh the benefits of specifying such area as part of the critical habitat, unless it is determined, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat would result in the extinction of the species concerned. The Secretary has delegated this authority to the Director of the Service. The Act thus requires the Service to evaluate those economic and other effects likely to take place due to the designation of critical habitat, and to consider whether to exclude any critical habitat.

The economic analysis (Souder 1992) of the potential impacts of critical habitat designation for the loach minnow concluded that economic impacts are expected on only three Federal actions—Federal Emergency Management Agency (FEMA) cost-shares to rebuild irrigation diversions after major flood events; additional fencing and alternative water developments to prevent cattle grazing in the riparian zones on the National Forest; and limited preventive measures at developed recreation sites. The estimated maximum identifiable added costs are $406,500 ($150,000 of which is attributable to the 84 km (52 mi) of river that forms part of the critical habitat designated for both the loach minnow and spikedace). With the exception of $8,412 in local cost-share for FEMA-eligible irrigation diversion reconstruction (should a flood occur), any added costs would be to the Federal government. The Director of the Service has not found it necessary to exclude from designation any of the areas proposed for designation on the basis of economic effects.

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Author

The primary author of this rule is S.E. Stefferud (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and 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 § 17.95(e) by adding critical habitat of loach minnow in the same alphabetical order as the species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

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Loach Minnow (*Tiaroga cobitis*)

Arizona:

1. *Graham and Pinal Counties:* Aravaipa Creek, approximately 24 km (15 mi) of stream extending from the N½ of the SW¼ sec. 26, T.6S., R.17E. upstream to the W½ of the NE¼ sec. 35, T.6S., R.19E.

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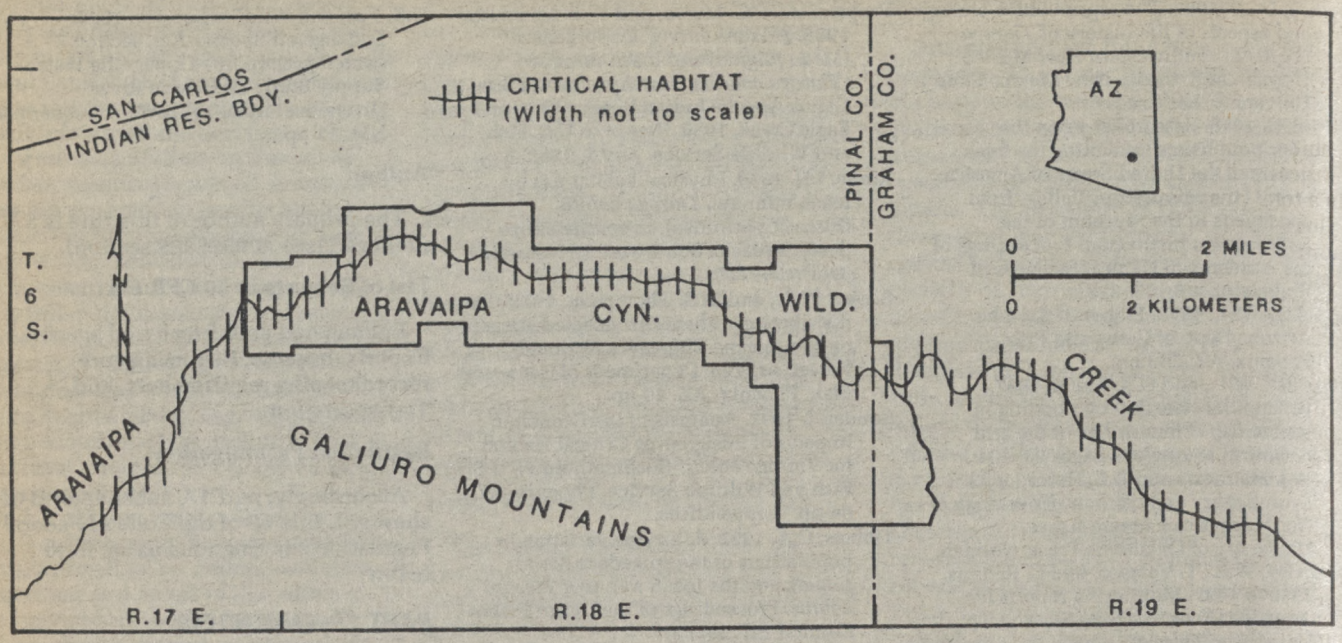

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2. *Greenlee County:*

a. Blue River, approximately 78 km (48 mi) of river, extending from the confluence with the San Francisco River (SE¼ sec. 31, T.2S., R.31E.) upstream to the confluence of Campbell Blue and Dry Blue creeks (SE¼ sec. 6, T.7S., R.21W.) in Catron County, New Mexico.

b. Campbell Blue Creek, approximately 14 km (9 mi) of stream, extending from the confluence with the Blue River (SE¼ sec. 6, T.7S., R.21W.) upstream to the confluence with Coleman Creek (SW¼ of the NE¼ sec. 32, T.4 ½N., R.31E.). Approximately 0.7 km (0.5 mi) of this stretch is located in Catron County, New Mexico.

c. San Francisco River, approximately 6 km (4 mi) of river, extending from the confluence with Hickey Canyon (west boundary of sec. 12, T.3S., R.30E.) upstream to the confluence with the Blue River (SE¼ sec. 31, T.2S., R.31E.).

New Mexico:

1. *Catron County:*

a. Dry Blue Creek, approximately 3 km (2 mi) of stream, extending from the confluence with the Blue River (SE¼ sec. 6, T.7S., R.21W.) upstream to the west boundary of the SE¼ sec. 32, T.6S., R.21W.

b. San Francisco River, approximately 15 km (9 mi) of river, extending from the U.S. Highway 180 bridge (NE¼ of the SW¼ sec. 8, T.10S., R.20W.) upstream to the east boundary sec. 14, T.9S., R.20W.

c. Tularosa River, approximately 24 km (15 mi) of river, extending from the confluence with Negrito Creek (SW¼ of the NW¼ sec. 19, T.7S. R.18W.) upstream to the town of Cruzville (south boundary sec. 1, T.6S., R.18W.).

d. Middle Fork Gila River, approximately 18 km (11 mi) of river, extending from the confluence with the West Fork (SW¼ sec. 25, T.12S., R.14W.) upstream to the confluence with Brothers West Canyon (NE¼ sec. 33, T.11S., R.14W.).

2. *Grant and Catron Counties:*

a. East Fork Gila River, approximately 26 km (16 mi) of river extending from the confluence with the West Fork (center of sec. 8, T.13S., R.13W.) upstream to the north boundary of sec. 11, T.12S., R.13W.

b. West Fork Gila River, approximately 11.5 km (7 mi) of river extending from the confluence with the East Fork (center of sec. 8, T.13S., R.13W.) upstream to the west boundary sec. 22, T.12S., R.14W.

3. *Grant County:* Gila River, approximately 37 km (23 mi) of river, extending from the south boundary sec. 21, T.17S., R.17W. upstream to the confluence with Mogollon Creek (NE¼ sec. 31, T.14S., R.16W.).

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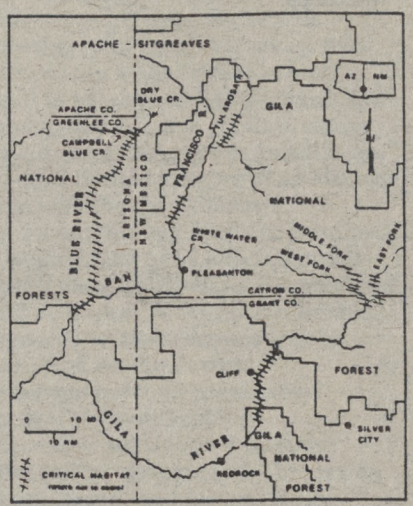

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Known constituent elements, for all areas of critical habitat, include permanent, flowing, unpolluted streams with low to moderate gradient supporting adequate areas of moderate to swift velocities and shallow depths, over gravel, cobble, and rubble substrates with little fine sediment. Adequate areas of slower velocities, shallower depths, and abundant cover are required for early life stages. Known constituent elements for all areas also include periodic flooding; a natural, unregulated hydrograph; healthy riparian vegetation; moderate to high bank stability; and an absence of or few non-native fishes present.

* * * * *

Dated: February 2, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94-5117 Filed 3-7-94; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC24

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Threatened Spikedace (Meda fulgida)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) designates critical habitat for the spikedace (*Meda fulgida*) under the

authority of the Endangered Species Act of 1973, as amended (Act). The spikedace, a small fish, was listed as a threatened species under the Act on July 1, 1986 (51 FR 23769); however, final designation of the proposed critical habitat was postponed at that time. Critical habitat is now being designated in a total of approximately 154 kilometers (km) (95 miles (mi)) of portions of the Gila River in Grant and Catron counties, New Mexico; the Verde River in Yavapai County, Arizona; and Aravaipa Creek in Graham and Pinal counties, Arizona. Federal actions that may affect the areas designated as critical habitat are now subject to consultation with the Service, pursuant to section 7(a)(2) of the Act.

DATES: The effective date of this rule is April 7, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Arizona Ecological Services Office, U.S. Fish and Wildlife Service, 3616 West Thomas, suite 6, Phoenix, Arizona 85019. Copies of the "Analysis of the Economic Impacts of Designating Critical Habitat for *Meda fulgida* (Spikedace)," August 12, 1992, are also available for inspection, by appointment, during normal business hours at the same location.

FOR FURTHER INFORMATION CONTACT: Sally Stefferud at the above address (602/379–4720).

SUPPLEMENTARY INFORMATION:

Background

The spikedace is a small, slim fish less than 80 millimeters (3 inches) long. It is characterized by very silvery sides and spines in the dorsal and pelvic fins. This species is found in moderate to large perennial streams, where it inhabits shallow riffles with sand, gravel, and rubble substrates and moderate to swift currents as well as swift pools over sand or gravel substrates (Barber *et al.* 1970, Propst *et al.* 1986, Rinne 1991). Recurrent flooding is very important in maintaining the habitat of the spikedace and also helps it maintain a competitive edge over invading non-native fish species (Propst *et al.* 1986, Minckley and Meffe 1987).

The spikedace was first collected in 1851 from the Rio San Pedro in Arizona, and was described from those specimens in 1856 by Girard. It is the only species in the genus *Meda*. The spikedace was once common throughout much of the Verde, Agua Fria, Salt, San Pedro, San Francisco, and Gila (upstream from Phoenix) River systems, occupying suitable habitat in both the mainstreams and moderate gradient perennial tributaries, up to 1,800 to 1,900 meters (m) (5,900 to 6,200 feet (ft)) elevation. Because of habitat destruction and competition and predation by non-native fish species, its range and abundance have been severely reduced, and it is now restricted to approximately 31 km (19 mi) of Aravaipa Creek in Graham and Pinal counties, Arizona; approximately 108 km (67 mi) of the upper Gila River in the Middle Box canyon, the Cliff/Gila Valley, and the lower end of the West, East, and Middle forks in Grant and Catron counties, New Mexico; approximately 57 km (35 mi) of the Verde River from the lower end of the Chino Valley downstream to near the mouth of Sycamore Canyon in Yavapai County, Arizona; and approximately 40 km (25 mi) of Eagle Creek in Greenlee County, Arizona (Minckley 1973, Anderson 1978, Barrett *et al.* 1985, Bestgen 1985, Propst *et al.* 1986, Marsh *et al.* 1990, Propst 1988 to 1992, Minckley *et al.* 1990 to 1992, Bettaso 1992 to 1993). This present range is only 9 percent of the historic range of 2,600 km (1,600 mi) of river.

Critical habitat is being designated for approximately 154 km (95 mi) on rivers currently occupied by spikedace. Land ownership along the critical habitat area is mixed and is as follows (distances and conversions are approximate):

Aravaipa Creek—The Bureau of Land Management (BLM) administers 10 km (6 mi) of the critical habitat as part of the designated Aravaipa Canyon Wilderness. Thirteen km (8 mi) of the critical habitat above and below the Wilderness, previously owned by the Defenders of Wildlife's Whittell Trust, is now owned by The Nature Conservancy (TNC) and managed as a nature preserve. About 1 km (0.5 mi) of stream is on privately owned inholdings located within the Preserve.

Gila River—The BLM administers 4.5 km (2.8 mi) of the Gila River critical habitat, just downstream from the mouth of the Middle Box canyon. This is part of a designated Area of Critical Environmental Concern, a special use designation of the BLM. Twenty-five km (15.5 mi) of land along the critical habitat in most of the Cliff/Gila Valley and in the area near Gila Hot Springs are privately owned. Two km (1.2 mi) of land along the critical habitat upstream from the town of Gila is owned by TNC. The New Mexico Department of Game and Fish administers land along 6 km (3.8 mi) of the critical habitat on the West and Middle forks of the Gila River. The New Mexico State Land Office owns land along 0.5 km (0.2 mi) of the critical habitat in the Cliff/Gila Valley. The National Park Service's Gila Cliff Dwellings National Monument lies along 1 km (0.5 mi) of the critical habitat in the West Fork. This Monument is currently being administered by the U.S. Forest Service. The U.S. Forest Service, Gila National Forest, administers the remaining 34 km (21 mi) of the critical habitat in the Gila River with sections flowing through three special use areas—Gila Wilderness, Lower Gila River Bird Habitat Management Area, and Gila River Research Natural Area.

Verde River—Forty-one km (25.5 mi) of spikedace critical habitat on the Verde River is located in the Prescott National Forest administered by the U.S. Forest Service. Fifteen km (9 mi) of privately owned land is located along the critical habitat below Sullivan Lake or as a few private inholdings along critical habitat within the U.S. Forest Service lands. The State of Arizona has 4 km (2.5 mi) of scattered State lands located along the river below Sullivan Lake.

The spikedace is included on the State lists of threatened and endangered species in Arizona and New Mexico (Arizona Game and Fish Dept. 1988, New Mexico State Game Comm. 1990). It was included as a Category 1 candidate species in the Service's December 30, 1982, Vertebrate Notice of Review (47 FR 58454). Category 1 includes those taxa for which the Service currently has substantial biological information to support listing the species as endangered or threatened. The Service was petitioned on March 14, 1985, by the American Fisheries Society (AFS) and on March 18, 1985, by the Desert Fishes Council (DFC) to list the spikedace as threatened. Because the species was already under active petition by AFS, the DFC petition was accepted only as a letter of comment. Evaluation of the AFS petition by the Service revealed that the petitioned action may be warranted. Finding that the petitioned action was warranted, the Service published a proposed rule to list this species as threatened with critical habitat on June 18, 1985 (50 FR 25390). The final rule listing the spikedace as a threatened species was published on July 1, 1986 (51 FR 23769). The proposed critical habitat designation was not made final at the time of listing but was postponed to allow for gathering and analysis of economic data.

Summary of Comments and Recommendations

In the June 18, 1985, proposed rule (50 FR 25390) and associated notifications, all interested parties were requested to submit factual reports or

information that might contribute to the development of a final rule. The original comment period closed on August 19, 1985, but was reopened on October 7, 1985 (50 FR 37703), to accommodate the public hearings, and remained open until November 8, 1985. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comment were published in the Courier in Prescott, Arizona; in the Eastern Arizona Courier in Safford, Arizona; and in the Daily Press in Silver City, New Mexico, on July 5, 10, and 13, 1985, respectively. One hundred twelve letters of comment were received from 109 separate parties and are summarized below. Six requests for a public hearing were received. Public hearings were held in Silver City, New Mexico; Safford, Arizona; and Phoenix, Arizona, on October 7, 8, and 9, 1985, respectively. Interested parties were notified of those hearings, and notices of the hearings were published in the Federal Register on September 17, 1985 (50 FR 37703); in the Silver City, New Mexico, Daily Press on September 24, 1985; in the Phoenix, Arizona, Arizona Republic on September 26, 1985; in the Prescott, Arizona, Courier on September 27, 1985; and in the Safford, Arizona, Eastern Arizona Courier on October 2, 1985. Thirty-six comments pertaining to the proposed critical habitat were received at these hearings and are also summarized below.

Seventy-eight letters of comment were received in support of the proposed critical habitat, 21 in opposition to the proposal, and an additional 13 which expressed neither support nor opposition or which furnished economic information regarding the effects of the proposal. The 3 public hearings were attended by 107 people, with 33 oral or written statements given—16 in support of the proposed critical habitat, 14 in opposition, and 3 neither in support nor opposition. In addition, three other parties asked questions regarding the proposed critical habitat. The hearings accepted formal oral and written statements and also included an informal question and answer session.

Many of the comments addressed concerns regarding specific water-development or flood-control projects. These comments will not be addressed here unless they requested or resulted in specific changes to the rule or to the rule procedure. Economic information supplied in these comments was incorporated into the economic analysis on proposed critical habitat (Souder 1992). That analysis is available upon request, as are copies of hearing transcripts and all letters received during the comment period (see **ADDRESSES** section).

Comments in support of the proposed critical habitat were received from the American Society of Ichthyologists and Herpetologists, Arizona Game and Fish Department, Arizona Nature Conservancy, Arizona State University Wildlife Society Chapter, Arizona Wildlife Federation, Audubon Society Appleton-Whittell Research Ranch, Defenders of Wildlife, Desert Fishes Council, George Whittell Wildlife Trust, International Union for the Conservation of Nature and Natural Resources (now known as the World Conservation Union), Maricopa Audubon Society, New Mexico Department of Game and Fish, New Mexico Nature Conservancy, Northern Arizona Paddlers Club, Prescott Audubon Society, Rio Grande Chapter of the Sierra Club, Southern New Mexico Conservation Coalition, Southern New Mexico Sierra Club, The Nature Conservancy's Rocky Mountain Natural Heritage Task Force, Tucson Audubon Society, U.S. Bureau of Land Management, Yuma Audubon Society, 3 members of the New Mexico Interstate Stream Commission, and 63 biologists and private citizens.

Comments in opposition to the proposed critical habitat were received from the Arizona Cattle Growers Association, Arizona Division of Emergency Services, Arizona Mining Association, City of Prescott, Congressman Jim Kolbe of Arizona, Coronado Resource Conservation and Development Board, County of Greenlee, Gila Fish and Gun Club, Gila Valley Natural Resource Conservation Board, Graham County Board of Supervisors, Grant County Chamber of Commerce, Hooker Dam Association, New Mexico State Engineer Office, Phelps Dodge Corporation, Southwest New Mexico Industrial Development Corporation, Town of Safford, Town of Silver City, Town of Thatcher, U.S. Forest Service, U.S. Soil Conservation Service New Mexico State Office, Upper Gila River Association, and six private citizens.

Nonsubstantive comments or comments containing only economic information were received from the Arizona State Clearinghouse, Federal Emergency Management Agency, Federal Highway Administration, Salt River Project, U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, U.S. Environmental Protection Agency, U.S. Soil Conservation Service Arizona State Office, and two private citizens.

Summaries of all substantive comments addressing the issue of critical habitat for the spikedace are provided in the following discussion. Comments of similar content are grouped in a number of general issues with the Service's response to those issues and comments.

Issue 1: Four commenters recommended that additional areas be included in the designation of critical habitat. Two commenters recommended that the critical habitat designation be changed to include the watersheds of the rivers being designated, as well as the rivers themselves.

Drs. Dean Hendrickson and Paul Turner recommended that the critical habitat designation be extended downstream in the Gila River to include the area between Red Rock, New Mexico, and the mouth of the Middle Box. Dr. Hendrickson's 1983–84 work (under contract with the U.S. Bureau of Reclamation) and that of Propst *et al.* (1986) and Anderson (1978) documented a large population of primarily larval and juvenile spikedace in the Red Rock to Middle Box area. He believes that the area may be an important nursery area for spikedace and may contribute significantly to upstream populations through upstream migration. The area would be affected by future water development in the Cliff/Gila Valley upstream.

Response: The Service believes that inclusion of the entire watershed in critical habitat designation for this fish is not necessary to provide adequate protection for the species. However, the Service recognizes the importance of the watersheds in maintaining quality habitat for the spikedace. Any Federal activities in the watersheds of streams designated as critical habitat that would affect the critical habitat would be subject to section 7 of the Act. The Service recognizes that limiting the proposed critical habitat to only the stream itself may not clearly indicate the importance of the streambanks and channel to the maintenance of the critical habitat. Therefore, future revision of the critical habitat to include a portion of the riparian zone or floodplain may be considered.

In the area of the Gila River between Red Rock and the mouth of the Middle Box, the majority of spikedace are located at the mouth of the Middle Box and are included in the critical habitat as proposed. The remainder are downstream from the critical habitat area but are nevertheless protected under the jeopardy provisions of section 7 and the prohibitions of section 9 of the Act. The area from the mouth of the Middle Box to the Arizona/New Mexico

border is considered to be potential recovery area for the spikedace and may be considered for addition to the critical habitat in future revision of the designation. Revision would require that an additional proposal be published in the **Federal Register**.

Issue 2: Four of the commenters recommended that the area of the Gila River that was being considered in 1985 for damming or other water development under the Bureau of Reclamation's Upper Gila Water Supply Study (UGWSS) be excluded from the critical habitat designation. Such an exclusion could be made under the provisions of section 4(b)(2) of the Act, which provides that the Secretary of the Interior may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as critical habitat, unless the failure to designate such area as critical habitat would result in the extinction of the species. The four commenters stated that the benefits of the water supply, flood control, and other associated economic and recreational benefits of the UGWSS, and Conner Dam in particular, far outweigh the benefits of critical habitat. One commenter also suggested that areas presently unoccupied by spikedace in the Gila River, the East Fork of the Gila River, and other streams could be designated as critical habitat to replace the excluded UGWSS area. The commenter suggested that such unoccupied areas could then be modified and managed to provide habitat for spikedace and then stocked with captive-reared spikedace to provide increased populations and habitat for the species.

Response: Planning for the UGWSS was suspended in 1987 (U.S. Bureau of Reclamation 1987a, 1987b) due to various economic, environmental, and water supply factors. Further planning was deferred until the year 2010 when it is predicted the need for the water supply will occur. Prior to that suspension, discussions between the Bureau of Reclamation and the Service on tentative alternatives for the UGWSS study indicated that development of the required water supply would likely be possible without adversely modifying the proposed critical habitat. Therefore, no economic or other impacts were anticipated to the UGWSS and no economic benefits would accrue from exclusion from critical habitat designation of the Conner Dam and Reservoir area, or any other area being considered under the UGWSS.

Regarding the suggestion to replace occupied areas in the critical habitat designation with unoccupied areas of the Gila River—the Service is considering a possible future revision to the critical habitat which may contain some presently unoccupied areas as potential recovery habitat. However, this would be an addition to the critical habitat, not a substitution. The Service does not believe it would further the conservation of the species to remove from the protection of critical habitat designation areas known to support long-term populations of spikedace and replace them with areas which do not currently support spikedace, but which, with human manipulation, might support spikedace in the future. However, the primary unoccupied area identified by the commenter as a replacement for the occupied areas is the canyon wilderness between Mogollon Creek and the East Fork Gila River (above the Cliff/Gila Valley), which probably never supported spikedace and does not appear to contain potential habitat for recovery of the species. The knowledge, expertise, and physical capability do not exist to modify such areas of non-suitable habitat into suitable habitat for spikedace. In addition, such modification might cause major irreparable harm to other native fish and aquatic organisms, riparian plant and wildlife communities, and wilderness values.

Issue 3: Two commenters requested that critical habitat be limited to areas that would not hinder the construction of flood-control facilities for the areas of Clifton, Duncan, and Safford, Arizona. As in Issue 2, this request for exclusion of specific areas was made under the provisions of section 4(b)(2) of the Act.

Response: The economic analysis (Souder 1992) did not show there to be significant economic or other benefits of excluding any area for flood control. Such a limitation of critical habitat is not expected to be necessary to allow for flood-control measures on the Gila and San Francisco rivers. Any such projects or activities, if they are federally funded, authorized, or carried out, would be subject to the provisions of section 7 regarding both the survival of the spikedace and the adverse modification or destruction of its critical habitat. The Service expects that alternatives and plan modifications formulated through consultation will allow adequate flood-control measures to be taken while safeguarding the species and its habitat.

Issue 4: One commenter recommended limiting designated critical habitat to areas that would not prevent the stocking of sport fish. The commenter pointed out that many of the non-native fish identified as predators on spikedace, such as catfish and trout, provide recreation for local residents and create revenue from sport fishing recreation. As in Issues 2 and 3, this request for exclusion of specific areas is made under the provisions of section 4(b)(2) of the Act.

Response: The designation of critical habitat as proposed is not expected to have significant effects on recreational fishing. The Arizona Game and Fish Department (AGFD) does not stock game fish in any of the waters proposed as critical habitat for the spikedace. The New Mexico Department of Game and Fish (NMGF) stocks only rainbow trout (*Oncorhynchus mykiss*) into or near the critical habitat for spikedace. Other fish currently being stocked into spikedace critical habitat are the endangered Colorado squawfish (*Ptychocheilus lucius*) and the endangered razorback sucker (*Xyrauchen texanus*), both native to the Gila River basin. Game fish are being stocked by the AGFD, NMGF, and the Service into waters connected to the proposed critical habitat. These stockings must comply with section 7 consultation requirements for their effects on spikedace, and designation of critical habitat is not expected to change the outcome of those consultations.

Issue 5: Three commenters recommended that various management techniques, such as habitat improvements, predator control, and reintroduction of spikedace from the Service's Dexter National Fish Hatchery, be implemented for spikedace in lieu of designating critical habitat.

Response: Habitat improvement practices, including predator control, cannot substitute for designation of critical habitat, unless such conservation measures alleviate threats to the species to the point where it no longer requires listing or critical habitat designation. Many of the threats to the spikedace cannot be alleviated by habitat improvements but can be controlled through designation of critical habitat and through the provisions of sections 7 and 9 of the Act. Too little is known about the specific habitat needs of the spikedace to ensure that habitat improvement practices and reintroductions would secure the survival of this fish. Habitat enhancement and reintroduction are measures that are being considered in the recovery of this species. Extensive study will be needed to ensure the success of such work.

The Dexter National Fish Hatchery does not presently maintain spikedace stocks. Facility space is limited, and priority is given to species whose survival depends heavily upon artificial propagation, a point the spikedace has

not yet reached. Placement of stocks of spikedace into that facility may be considered in the future; however, a number of years are often needed to develop the techniques required to successfully propagate a given species in captivity, thus precluding the use of captive stock in alleviating the immediate need for critical habitat designation. In addition, reintroductions may be more likely to succeed if the reintroduction area(s) are protected through designation as critical habitat.

Issue 6: Two commenters expressed concerns regarding the value of designating critical habitat when there is a significant threat to the spikedace from predatory and competitive non-native fish. One commenter believed that the designation of critical habitat without a management and statutory effort to control undesirable introduced fish species is not justified. The other commenter believed that critical habitat designation for the spikedace in the Gila River is futile because of the impending extinction of the spikedace due to displacement by the non-native red shiner (*Cyprinella* (formerly *Notropis*) *lutrensis*).

Response: The existence of threats to a listed species from other organisms, such as non-native fishes, does not relieve the Service of its responsibility to protect the species' habitat. The spikedace faces extensive threats to its habitat and will benefit from designation of critical habitat. The Service is presently working with the State Game and Fish departments and other agencies on solutions for controlling the introduction and spread of non-native fish species, including game fish. Although the red shiner appears to displace the spikedace in some locations and is considered a serious range-wide threat to the spikedace, the red shiner populations in the Gila River have remained small since their initial invasion in the early 1980's. A key factor in controlling the displacement of spikedace by red shiner is the protection and enhancement of the habitat. Thus, designation of critical habitat is expected to be valuable in controlling the threat from red shiner.

Issue 7: Three commenters objected to the deferral of analysis of economic and other impacts of critical habitat designation until the time of the final rule. They believed such analysis should be done prior to the proposal and contended that deferral is "improper both legally, procedurally and in failing to follow reasonable and necessary rulemaking steps," is "certainly unreasonable and probably illegal," and does not allow the public access to essential information needed to comment on the impacts and review the adequacy of the Service's analysis. They further contended that a Regulatory Impact Analysis, under Executive Order 12291, must be prepared for the critical habitat proposal.

Response: The economic analysis (Souder 1992) of the proposed spikedace critical habitat designation was prepared following the publication of the proposed rule and prior to the final decision on the proposed critical habitat designation. This procedure is based upon the specific requirement of the Act exempting listing actions from economic considerations. When a listing and critical habitat designation are proposed concurrently, as is required (with certain exceptions) by the Act, the economic analysis is not conducted prior to proposal to avoid illegally influencing or delaying the listing. Because Executive Order 12291 was rescinded on September 30, 1993 (58 FR 51735), a Regulatory Impact Analysis is not required.

Issue 8: Three commenters stated that an Environmental Impact Statement (EIS), under the National Environmental Policy Act (NEPA), should be prepared for this critical habitat proposal. They contended that the 1981 6th Circuit Court of Appeals' *Pacific Legal Foundation* v. *Andrus* decision, which found that an EIS is not required for listings under the Endangered Species Act, is not applicable to the current critical habitat proposal. Their reasons for this contention include—the *Pacific Legal Foundation* v. *Andrus* decision addressed only listing and not critical habitat designation, the Act now requires the consideration of economic and other relevant impacts of specifying an area as critical habitat, and the Act also now requires the Secretary of the Interior to determine whether the benefits of excluding an area from critical habitat designation outweigh the benefits of specifying such area as part of the critical habitat.

Response: The Service's position on NEPA compliance for any regulations adopted pursuant to section (4)(a) of the Act (listing, critical habitat designation, reclassification, delisting) is set forth in the Federal Register of October 25, 1983 (48 FR 49244). In addition to *Pacific Legal Foundation* v. *Andrus*, the Service's position on NEPA compliance is based on the recommendation of the Council on Environmental Quality, the fact that the Act stipulates a process to be followed in promulgating such rules and limits Secretarial discretion in altering the critical habitat designation, and on the experience of 10 years of preparation of Environmental Assessments on section 4(a) actions. In those 10 years, 120 Environmental Assessments were prepared, none of which resulted in a finding of significant impact and consequent preparation of an EIS.

Analysis of economic impacts for critical habitat designations is required by Executive Order 12866 and section 4(b)(2) of the Endangered Species Act, and the Service has prepared an economic analysis (Souder 1992) in compliance with those authorities. When the economic analysis is added to the administrative record generated through the public comment process, it provides the functional equivalent of NEPA documentation and satisfies the information-gathering, analytical, and environmental goals of NEPA.

Issue 9: Three commenters recommended that, in assessing the economic impacts of proposed critical habitat, the Service should consider the cumulative effects of all past species listings and critical habitat designations and all such actions that are or may be under consideration in the area to be affected by proposed critical habitat. They believed that the economic effects caused by past and future actions for other species are relevant in determining economic and other impacts in the proposed critical habitat area.

Response: In assessing the impacts of a critical habitat designation, the Service considers in its baseline the cumulative effects resulting from earlier listings and critical habitat designations to the extent that such effects can be determined. Effects of this critical habitat designation were calculated incrementally above the baseline of other species listings and critical habitat, as well as other environmental and land-management regulations. Consideration is limited to known impacts and does not include theoretical or hypothetical impacts. Currently, the only other federally listed species present in streams in which the spikedace is found are the threatened loach minnow (*Tiaroga cobitis*), the endangered razorback sucker (*Xyrauchen texanus*), and a nonessential experimental population of the Colorado squawfish (*Ptychocheilus lucius*). Nonessential experimental status provides protection equivalent to that for a proposed species, which includes only limited section 7 protection and thus has little or no economic or other impacts. The endangered bald eagle (*Haliaeetus leucocephalus*) occurs near some spikedace habitat but is not expected to contribute to cumulative effects for the spikedace. No existing critical habitat

designations are located in any of the areas being designated as spikedace critical habitat. Designation of critical habitat in areas of spikedace-occupied streams and adjacent floodplains and riparian vegetation has been proposed for the loach minnow, the razorback sucker, and the southwestern willow flycatcher (*Empidonax traillii extimus*). Expected impacts of designation for the sucker and flycatcher are not yet available but will be detailed in the economic analyses for those proposals. Expected impacts of designation for the loach minnow become available with the publication of final critical habitat for that species, concurrent with this rule (in this separate part of the **Federal Register**). Cumulative economic impacts may be expected only in areas of non-overlap where alternative sites for projects may be affected by one species in one area and the other species in other areas or from differences in constituent elements for the southwestern willow flycatcher as compared to the fishes.

Issue 10: One commenter questioned the inclusion of the Middle Box in proposed critical habitat. The commenter based the question on a report by the Service's Albuquerque Ecological Services Field Office (USFWS 1985), which stated that the area of the Middle Box (proposed site of Conner Dam and Reservoir) has the lowest habitat value for aquatic species and general ecology in the portion of the Gila River from Mogollon Creek downstream through the Red Rock area. The report also stated that the greatest habitat value to the native fishes is found in the Cliff/Gila/Riverside Valley. That valley has a large concentration of existing manmade structures. The commenter asked for a clarification of the apparent contradiction between the low habitat rating of the Middle Box and its inclusion in the proposed critical habitat, and of the apparent contradiction between the high habitat rating of the Cliff/Gila/ Riverside Valley and the statements in the proposed rule regarding the adverse effects of human activities on spikedace habitat.

Response: The Middle Box does provide less overall general aquatic habitat quality and diversity than other stretches. However, there are large numbers of spikedace at the upper end of the Middle Box and at its mouth. The short unoccupied stretch between those two areas is too small to be omitted from the critical habitat for biological reasons and provides an essential element to the critical habitat by providing a channel for water, fish, and gene flow between the two segments. Alteration or loss of that connection would likely result in extirpation of spikedace in the lower area. The comparatively high habitat value of the Gila/Cliff/ Riverside Valley is not inconsistent. All manmade structures are not equally destructive of habitat values. Most of the structures in the Gila/Cliff/Riverside area are small and have localized impacts on the aquatic habitat. In the localized areas of those impacts, spikedace are scarce or do not exist.

Issue 11: The Graham County (Arizona) Manager asked if the designation of critical habitat will affect the availability of Federal money for studies by the Bureau of Reclamation and U.S. Army Corps of Engineers on dam projects in the area.

Response: Designation of critical habitat will not automatically alter or stop any studies or projects in the area. Rather, any project that is federally funded, authorized, or carried out will be subject to the provisions of section 7 of the Act. These provisions are explained in this final rule. Studies or projects can be carried out by the Bureau of Reclamation or Corps of Engineers if those studies or projects do not destroy or adversely modify critical habitat or jeopardize any listed species.

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the spikedace (*Meda fulgida*) in the following areas (distances and conversions are approximate):

1. Aravaipa Creek, Graham and Pinal counties, Arizona. Twenty-four km (15 mi) of stream extending from the N½ of the SW¼ sec. 26, T.6S., R.17E. upstream to the W½ of the NE¼ sec. 35, T.6S., R.19E.

2. Verde River, Yavapai County, Arizona. Fifty-seven km (35 mi) of river extending from 1 km (0.5 mi) below the confluence with Sycamore Creek upstream to Sullivan Lake.

3. Gila River, Grant and Catron counties, New Mexico. Three sections of river totaling 73 km (45 mi) in length. The first section is 50 km (31 mi) long and extends from the mouth of the Middle Box canyon upstream to the confluence with Mogollon Creek. A second section, of 11.5 km (7 mi), extends up the West Fork from its confluence with the East Fork to the west boundary of sec. 22, T.12S., R.14W. The last section is 11.5 km (7 mi) long and extends up the Middle Fork from its mouth to the confluence with Big Bear Canyon.

One change in the critical habitat originally proposed for spikedace has been made in this final rule. Sycamore Creek, a tributary of the Verde River in Yavapai County, Arizona, has been removed from the final critical habitat designation as a result of new biological information received. The lower 1.5 km (1 mi) of Sycamore Creek was included in the proposed critical habitat due to erroneous data on the presence of spikedace. No records of spikedace in Sycamore Creek are known; thus potential habitat there is limited to the mouth of the creek.

The Service is required to base critical habitat proposals on the best available scientific information (50 CFR 424.12). In determining what areas to propose as critical habitat, the Service considers those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, the following—(1) space for individual growth; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

The areas being designated as critical habitat for the spikedace possess the necessary factors for survival, growth, and reproduction of the species. Several areas currently occupied by the spikedace were not included in the 1985 proposal for various reasons. Although these areas were not proposed for designation as critical habitat, they are considered important for the long-term survival and recovery of the spikedace. The Service is considering revising critical habitat in the future to add these areas, including the occupied area recommended for inclusion as critical habitat in the recovery plan for the species (USFWS 1991). In addition, the

Service is considering adding certain unoccupied areas considered vital for recovery of the species.

Maintenance of the widely separated populations found in the Gila and Verde rivers and in Aravaipa Creek as independent entities is critical to buffer against threats to each individual population. Each of the remnant populations proposed for critical habitat designation has unique characteristics which contribute to ensuring this species' future. Genetic studies in progress indicate that the populations are genetically distinctive (Tibbets 1992). The Aravaipa Creek population is one of only two remnants of the south-central portion of the spikedace's historic range and is under the most protective land management. The Verde River population is the only remnant of the northern portion of the historic range. The upper Verde River is unusual in its relatively stable thermal and hydrologic regime and the spikedace population there is the most genetically distinct, possibly to the subspecific or specific level. The West and Middle forks of the Gila River have a relatively low degree of habitat threat and may contribute genetically to the Cliff/Gila Valley population. The Cliff/Gila population is the largest existing population of spikedace and, although faced with numerous threats, may represent the "core" population of the species.

When designating critical habitat for a species, the Service also considers the primary constituent elements of critical habitat, which may include, but are not limited to, the following—roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types. The areas being designated as critical habitat for spikedace will provide the following constituent elements or will be capable, with rehabilitation, of providing them. Spikedace constituent elements have been expanded from the proposed rule. The primary constituent elements include:

—Permanent, flowing, unpolluted water;
—Habitat for adult fish with slow to swift flow velocities (0–100 centimeter (cm) (0–3 ft) per second) in shallow water (3–38 cm (0.1–1.25 ft) deep) with shear zones where rapid flow borders slower flow, areas of sheet flow at the upper ends of mid-channel sand/gravel bars, and eddies at downstream riffle edges;
—Habitat for juveniles with slow to moderate flow velocities (0–60 cm (0–2 ft) per second) in shallow water (3–70 cm (0.1–2.25 ft) deep) with moderate amounts of instream cover;
—Habitat for larval stage with slow to moderate flow velocities (0–30 cm (0–1 ft) per second) in shallow water (3–30 cm (0.1–1 ft) deep) with abundant instream cover;
—Sand, gravel, and cobble substrates with low to moderate amounts of fine sediment and substrate embeddedness;
—Pool, riffle, run, and backwater components in the habitat;
—Low stream gradient (generally 0.5–1.5 percent);
—Water temperatures in the approximate range of 1–30° C (35–85° F) with natural diurnal and seasonal variation;
—Abundant aquatic insect food base;
—Periodic flooding;
—A natural, unregulated hydrograph;
—Few or no predatory or competitive non-native species present;
—A healthy, intact, riparian community; and
—Moderate to high bank stability.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Any activity that would lessen the amount of the minimum flow or would alter the natural flow regime in Aravaipa Creek or the upper Gila or Verde rivers could adversely affect critical habitat. Such activities include, but are not limited to, groundwater pumping, impoundment, and water diversions. Any activity that would alter watershed characteristics of the Aravaipa Creek or upper Gila or Verde River watersheds could adversely affect the critical habitat. Such activities include, but are not limited to, vegetation manipulation, timber harvest, prescribed burning, road construction, livestock grazing, mining, and urban or suburban development. Any activity that would alter the channel morphology in Aravaipa Creek or the upper Gila or Verde rivers could adversely affect the critical habitat. Such activities include, but are not limited to, channelization, impoundment, deprivation of substrate source, destruction and alteration of riparian vegetation, and excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed disturbances. Any activity that would alter the water chemistry in Aravaipa Creek or the upper Gila or Verde rivers could adversely affect the critical habitat. Such activities include, but are not limited to, release of chemical or biological pollutants into the waters at a point source or by dispersed release (non-point). Any activity that would introduce, spread, or augment non-native fish species in the Gila River basin could adversely affect the critical habitat. Such activities include, but are not limited to, stocking of game fish, use of live bait fish, stocking for biological control, aquaculture, dumping of pet or aquarium fish, construction and operation of canals, and interbasin water transfers.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of all additional relevant information obtained during the public comment period and public hearings. All additional information received has been addressed in the "Summary of Comments" section of this rule or in the economic documents prepared on the rule. The economic analysis (Souder 1992) is available upon request; its conclusions are summarized in the "Summary of Economic Analysis" section of this rule.

Available Conservation Measures

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat. 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 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.

No Federal activities on Bureau of Land Management lands on Aravaipa Creek are expected to be affected by designation of critical habitat for spikedace. The Aravaipa Canyon Wilderness is presently being managed to protect and enhance natural resource values. However, if existing or increased recreational use within the canyon results in streambank degradation and increased sediment or pollution load in the stream, then section 7 consultation may be necessary.

On U.S. Forest Service lands on the Gila and Verde rivers, little effect on

Federal activities is expected as a result of this rule. Section 7 consultations for grazing, mining, timber harvest, recreation, or other activities affecting spikedace critical habitat would now address effects to the critical habitat in addition to effects to the spikedace itself. The primary effect anticipated by the U.S. Forest Service is possible increased administrative costs due to consultation requirements. Designation of critical habitat may result in some increases in mitigation needs for various land use activities.

On Bureau of Land Management lands on the upper Gila River, little or no effect is expected on present Federal activities because the area is designated as an Area of Critical Environmental Concern, which requires management to protect natural resource values.

Water development on the upper Gila and upper Verde rivers, under the Bureau of Reclamation's Central Arizona Project (CAP), may be affected by this rule. One informal section 7 conference (USFWS 1986) and two formal section 7 consultations (one completed (USFWS 1990) and one not completed) have been conducted on CAP projects and their likelihood to jeopardize the survival of the spikedace and adversely modify the proposed critical habitat. No current proposals exist for CAP water development in either area. The potential for designation of critical habitat to affect future water-development plans is dependent upon the level and type of adverse effects to the spikedace and its habitat. Those effects would depend upon the location, size, method, and other specifics of the proposed water development. If major adverse effects on critical habitat are expected, changes in water-development plans may be required. However, only those changes in addition to any changes required as a result of section 7 consultation on the species would be attributable to critical habitat.

Known Federal activities on private lands that might be affected by this rule would be future flood control funded by the Federal Emergency Management Agency or carried out by the Soil Conservation Service or the U.S. Army Corps of Engineers, future highway and bridge construction funded, authorized, or carried out by the Federal Highway Administration, or future federally funded irrigation projects. Private activities within the stream channels that may require permits under sections 402 and 404 of the Clean Water Act may also be affected by this rule. Effects are expected to be limited to administrative costs for section 7 consultation and costs for altering proposed projects to minimize or avoid effects to spikedace and its critical habitat.

National Environmental Policy Act

The Service has determined that Environmental Assessments and Environmental 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).

Regulatory Flexibility Act and Executive Order 12866

This final rule has been reviewed under Executive Order 12866. The Department of the Interior has determined that designation of critical habitat for the spikedace 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.*). Based on the information discussed in this rule concerning public projects and private activities within the critical habitat areas, it is not expected that significant economic impacts will result from the critical habitat designation. In addition, there are a limited number of actions on private land that have Federal involvement through funds or permits that would affect or be affected by the critical habitat designation; the potential economic impact of the critical habitat designation on these actions will be minor. Also, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by this designation. This action does not impose any recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

Summary of Economic Analysis

Section 4(b)(2) of the Act requires the Service to designate critical habitat on the basis of the best scientific data available and to consider the economic impact and any other relevant impact of specifying any particular area as critical habitat. The Secretary of the Interior (Secretary) may exclude any area from critical habitat if he determines that the benefits of such exclusions outweigh the benefits of specifying such area as part of the critical habitat, unless it is determined, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat would result in the extinction of the species concerned. The Secretary has delegated this authority to the Director of the Service. The Act thus requires the Service to evaluate those economic and other effects likely to take place due to the designation of critical habitat, and to consider whether to exclude any critical habitat.

The economic analysis (Souder 1992) of the potential impacts of critical habitat designation for spikedace concluded that economic impacts are expected on only three Federal actions—Federal Emergency Management Agency (FEMA) cost-shares to rebuild irrigation diversions after major flood events; additional fencing and alternative water developments to prevent cattle grazing in the riparian zones on the National Forest; and limited preventive measures at developed recreation sites. The estimated maximum identifiable added costs are $150,000 (all of which is also attributable to critical habitat designated for the loach minnow, since the two species share 84 km (52 mi) of critical habitat). With the exception of $8,412 in local cost-share for FEMA-eligible irrigation diversion reconstruction (should a flood occur), any added costs would be to the Federal government. The Director of the Service has not found it necessary to exclude from designation any of the areas proposed for designation on the basis of economic effects.

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Author

The primary author of this rule is S.E. Stefferud (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and 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 § 17.95(e) by adding critical habitat of spikedace in the same alphabetical order as the species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

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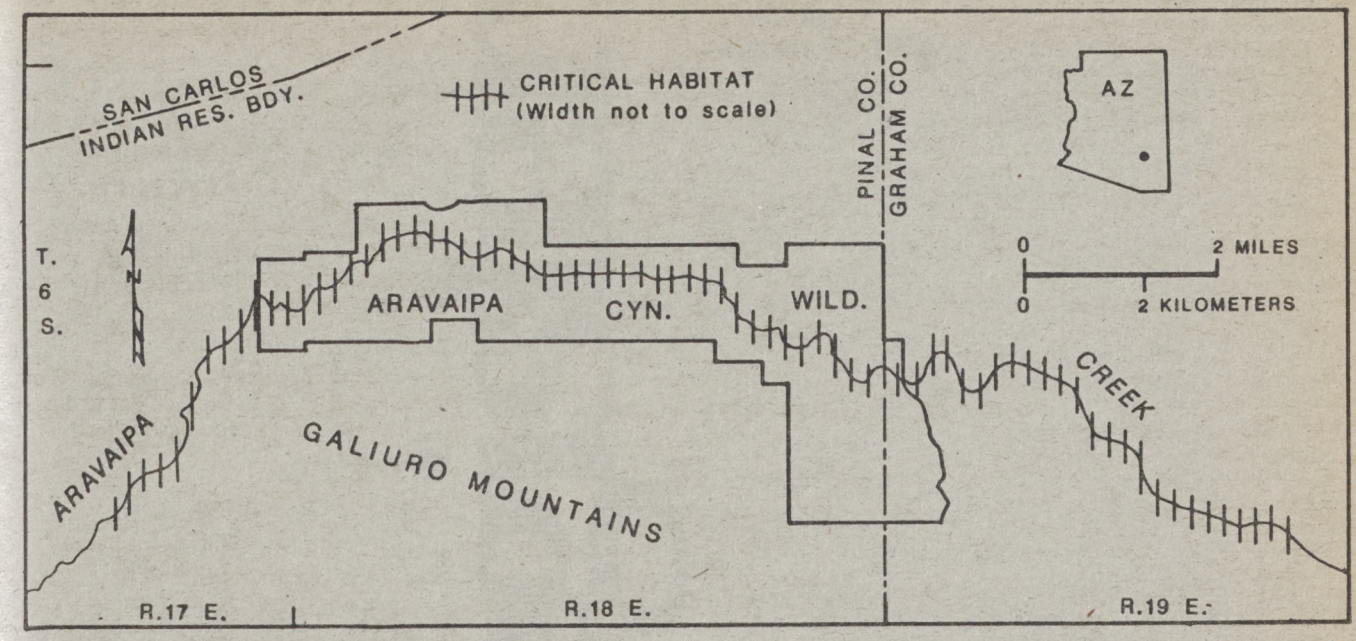
Spikedace (*Meda fulgida*)

Arizona

1. *Graham and Pinal Counties:* Aravaipa Creek, approximately 24 km (15 mi) of stream extending from the N½ of the SW¼ sec. 26, T.6S., R.17E. upstream to the W½ of the NE¼ sec. 35, T.6S., R.19E.

BILLING CODE 4310–55–P



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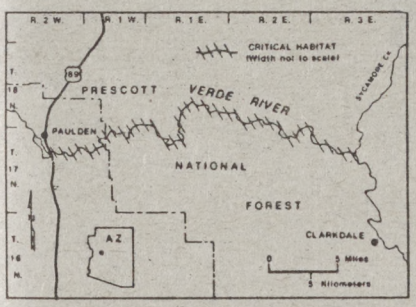
2. *Yavapai County:* Verde River, approximately 57 km (35 mi) of river, extending from about 1 km (0.5 mi) below the confluence with Sycamore Creek (south boundary of the NW¼ sec. 17, T.17N., R.3E.) upstream to the Sullivan Lake dam (NE¼ of the NW¼ sec. 15, T.17N., R.2W.).

BILLING CODE 4310-55-P



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New Mexico

1. *Grant County:* Gila River, approximately 50 km (31 mi) of river, extending from the mouth of the Middle Box canyon (NW¼ of the SW¼ sec. 23, T.18S., R.18W.) upstream to the confluence with Mogollon Creek (NE¼ sec. 31, T.14S., R.16W.).

2. *Grant and Catron Counties:* West Fork Gila River, approximately 11.5 km (7 mi) of river, extending from the confluence with the East Fork (center of sec. 8, T.13S., R.13W.) upstream to the west boundary sec. 22, T.12S., R.14W.

3. *Catron County:* Middle Fork Gila River, approximately 11.5 km (7 mi) of river, extending from the confluence with the West Fork (SW¼ sec. 25, T.12S., R.14W.) upstream to the confluence with Big Bear Canyon (NW¼ sec. 2, T.12S., R.14W.).

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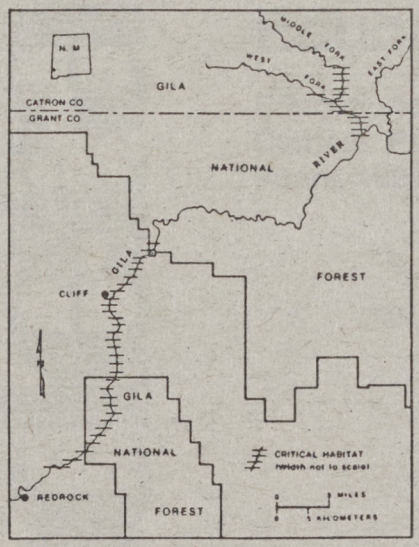

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Known constituent elements, for all areas of critical habitat, include permanent, flowing, unpolluted streams with low to moderate gradient supporting adequate areas of shear zones, sheet flows, and other appropriate habitat with slow to swift velocities and shallow depths, over sand, gravel, and cobble substrates with low to moderate amounts of fine sediment. Adequate areas of slower velocities, shallower depths, and abundant cover are required for early life stages. Known constituent elements for all areas also include periodic flooding; a natural, unregulated hydrograph; healthy riparian vegetation; moderate to high bank stability; and an absence of or few non-native fishes present.

* * * * *

Dated: February 2, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94-5118 Filed 3-7-94; 8:45 am]

BILLING CODE 4310-55-P

federal register

Tuesday
March 8, 1994

Part V

Department of Education

Educational Research and Development Centers Program; Final Priority for Fiscal Years 1994 and 1995; Notice

DEPARTMENT OF EDUCATION

Educational Research and Development Centers Program, Final Priority for Fiscal Years 1994 and 1995

AGENCY: Department of Education.

ACTION: Notice of final priority for fiscal years 1994 and 1995.

SUMMARY: The Secretary announces a priority for fiscal years 1994 and 1995 under the Educational Research and Development Centers Program. The Secretary takes this action to support a national research and development center or centers to study the education of children and youth placed at risk of educational failure. The priority is intended to increase knowledge related to improving educational practices that address an important national need.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Conaty, U.S. Department of Education, 555 New Jersey Avenue, NW, room 610, Washington, DC 20208–5573. Telephone: (202) 219–2079. 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.

SUPPLEMENTARY INFORMATION: The Educational Research and Development Centers Program, authorized under section 405 of the General Education Provisions Act (20 U.S.C. 1221e), supports sustained educational research and development activities, including those designed to generate knowledge that increases the capacity of the Nation's education system to provide all children and youth with equal educational opportunities to achieve academic excellence. The program helps to advance the National Education Goals, which emphasize the importance of improving the quality of education for children and youth (1) who are most at risk of educational failure, or (2) whose educational achievement falls seriously short of their educational potential.

Using guidance provided from such sources as the recent National Academy of Sciences' report on Research and Education Reform: Roles for the Office of Educational Research and Improvement (1992) and public comments provided by researchers, policymakers, and practitioners, the Secretary seeks to provide support for national research and development centers designed to conduct sound and coherent education research programs on important topics.

The Secretary believes that deliberate, sustained, and coordinated initiatives should be undertaken to improve the social and educational conditions that threaten the learning of many educationally disadvantaged children and youth, in urban and rural settings. (Readers should note that, as used in this notice—including the priority—the term "students" means children and youth in educational systems, programs, or settings.)

In the course of developing this final priority, the Secretary has followed legally mandated procedures for rulemaking. In addition, the Secretary has, through the Office of Educational Research and Improvement (OERI), engaged in other information gathering activities designed to ensure identification of the kinds of research needed to improve the education of all students who are at risk of school failure or whose academic performance does not meet high standards. The following statement describes in chronological order all the activities undertaken by the Secretary to obtain public comments and other information that have been taken into account in developing this final priority.

On January 27, 1993, the Secretary published a notice in the **Federal Register** (58 FR 6267) inviting public comments on "research needed to improve the education of students who are at risk of educational failure or substantially below average academic achievement." The notice did not propose a priority, but solicited comments to be considered by OERI in determining what priority, if any, should be proposed with respect to this subject area. The notice requested that written comments from the public be submitted by March 1, 1993.

In June 1993, staff of OERI met with appropriate officials from the Departments of Health and Human Services, Justice, Labor, Agriculture, and Housing and Urban Development, and the National Science Foundation to discuss the subject of the January 27 **Federal Register** notice.

On October 4, 1993, the Secretary published in the **Federal Register** (58 FR 51690) a proposed priority to govern any competition for a national research and development center or centers to study the education of children and youth at risk of educational failure. In the October 1993 notice the Secretary also stated the availability of a draft of a background document to be used to provide additional suggestions to prospective applicants about addressing the mission of the planned center, and the priority. The notice invited written public comments—to be submitted by November 18, 1993—on the proposed priority and the related background document. On October 4 and 5, immediately after publication of the proposed priority, OERI convened a meeting of non-Federal researchers, practitioners, policymakers, and parents to discuss the proposed priority and the background document.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, 45 parties submitted written comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: Two commenters recommended that the Department cancel its plans to make an award for a research and development center that would address this priority. They believed that the prospective center's work would duplicate research already under way at other national research and development centers supported by OERI or at other locations supported by various Federal agencies and private foundations. They felt that the proposed center's findings would not be used to improve the educational system, because the center would not collaborate with laboratories or clearinghouses or with practitioners in schools.

Twenty-three commenters wrote to express general support for establishing a center addressing the priority, and an overwhelming majority of other comments received made specific recommendations regarding the research activities that this type of center should conduct, implying these commenters' support for such a project.

Discussion: The Secretary does not believe that a center carrying out the priority will duplicate research already under way or completed. The Secretary will make an award only if convinced that the applicant's proposed work promises to make significant contributions to the field. Centers are required by regulation to collaborate with other national research and

development centers, laboratories, and clearinghouses. Centers are also required to ensure that information developed as a result of their research and development activities, including new educational methods, practices, techniques, and products, will be appropriately disseminated.

Changes: None.

Comments: Twelve commenters recommended dropping the use of the term "at-risk students." They believed that the term implied blaming students for being in circumstances for which the students are not responsible and that labelling students in this way has negative consequences for the students. The commenters suggested adopting a term that shifted the emphasis to the conditions or institutions that produce the risk of educational failure, such as poverty, abuse, violence, poor health, limited English proficiency, and schools that contain barriers to educational success.

Discussion: The Secretary does not wish to imply that children and youth should be considered responsible for the conditions in which they live and over which they have no control. Families, communities, schools, and society at large all may have contributed to the adverse conditions faced by many children and youth, along with circumstances outside of anyone's control. At the same time, the Secretary believes, as several commenters noted, that it is important to realize that there are children and youth whose individual qualities enable them to succeed despite the difficult obstacles they face.

Changes: The Secretary has dropped the term "at-risk students" from the priority, replacing it with a term that draws attention to conditions that place children and youth at risk and, thereby, make it especially difficult for them to attain educational success.

Comments: Fifteen commenters recommended that the priority identify more specifically the population or populations of children and youth placed at risk of educational failure. The commenters identified some 17 populations of children and youth that individual commenters felt needed improvements in their opportunities to learn and attain educational success. Examples of these identified population groups included children who are poor, those from diverse cultural backgrounds, and adolescents. Many of the comments referred to the need to concentrate the limited resources of the center on one or another of these populations.

Discussion: The comments reflect a variety of different views about which population or populations of children and youth placed at risk of educational failure the center's work should focus on and what research knowledge would be most helpful to improving their education. In many instances individual children and youth fall into several of the recommended population categories; for example, young children with disabilities living in rural poverty. The Secretary believes that, taken together, the comments do not reflect one way of population identification that is clearly best. The Secretary believes that better applications will result if applicants are allowed to propose and justify what population or populations will be studied in their proposed center's research and development activities.

Changes: None.

Comments: Ten commenters recommended that the priority place a greater emphasis on activities related to development. The commenters felt that current research knowledge was underused. They also felt that by carrying out certain development-related activities researchers and educators could improve their understanding of how to use knowledge gained from research to implement successful educational practices in numerous settings.

Discussion: The Secretary believes that development activities are an integral part of the work of research and development centers and that these activities constitute very important means to improve education. The Secretary also believes that the priority gives proper attention to the role of development activities by twice explicitly requiring development activities and by requiring the center to contribute to the capacity of educational systems to provide students with equal opportunities to learn.

Changes: None.

Comments: Six commenters recommended various changes in the description of the methods and kinds of research activities to be carried out by a center. These commenters recommended requiring the center to carry out research syntheses and secondary analyses of data collected by the National Center for Education Statistics (NCES) and to do basic research, applied research, and development work. They suggested that syntheses of existing research serve to consolidate what is known about an educational problem and to guide further research and development of successful practices. The commenters also pointed out that secondary analyses of NCES databases offer the opportunity to examine a variety of research questions using data about large population samples in a timely, inexpensive manner. The recommendation that the center do basic and applied research and development activities was based on the commenters' view that all of these functions can contribute to improving education.

One commenter supported—as appropriate for a center—the kinds of research and development activities described in the priority.

Discussion: The Secretary believes that syntheses sometimes serve an important function in the development of research project designs and in the creation of improvements in practice. The Secretary expects that a research and development center will include syntheses as part of its activities, but only if syntheses are not already available. Likewise, the Secretary expects research and development centers to use analyses of existing NCES databases in their research projects if these analyses would contribute to the center's research objectives. The Secretary notes that research and development centers are not the only means through which the Department supports both syntheses and secondary analyses of data collected by NCES.

The Secretary also believes that the priority adequately represents the view that basic research, applied research, and development activities all play a legitimate role in the mission of research and development centers.

Changes: None.

Comments: Four commenters raised questions about the priority's requirement that the center conduct at least one definitive research study, questioning the use of the term "definitive" in the priority. The commenters doubted whether it was realistic to expect a center to conduct this type of study and whether any study could guarantee the elimination of bias.

Two other commenters supported this provision in the priority, one of them suggesting that the center could conduct several definitive research studies.

Discussion: The Secretary understands the term "definitive research study" to refer to a study whose design, size, scope, and technical rigor are such that its findings cannot be ignored by the research community. These studies exert a major influence on subsequent research, development, policy, and practice in their topic area for a substantial period of time. The priority's requirement that a project conduct one or more definitive research studies is meant to reflect the Secretary's position that research and

development centers are especially well-suited to carry out these activities, which require significant commitments of researchers' expertise, resources, and institutional support over a sustained period of time.

The Secretary does not expect definitive studies to bring all research in a particular topic area to a close, nor does the Secretary believe that any research study's design can make it entirely invulnerable to later review and criticism on the basis of questionable or false assumptions that had been taken for granted by the leading researchers in the field. The Secretary does believe, however, that a center should commit to at least one research project sufficient efforts and resources to preclude leading experts from identifying any significant limitations in the design of the project.

Changes: None.

Comments: Six commenters recommended that the center should require researchers and practitioners to collaborate with each other in the various stages of designing and implementing the center's research and development activities. The commenters felt that this collaboration could improve the direction of educational research.

Discussion: The Secretary believes that practitioners can play an important and meaningful role in the work of research and development centers. The instructions to prospective applicants in the application package encourage the proposed center to develop in its activities interaction between researchers and practitioners. Thus, applicants are encouraged to describe in their application proposals how they plan to approach the creation, design, and development of research projects.

Changes: None.

Comments: Three commenters recommended that the priority refer to a comprehensive concept of educational success, including not only academic achievement, but also qualities such as creativity, personal and civic responsibility, self-reliance, and social competence. The commenters felt that these qualities are important and integral features of educational success and are implicit in the National Education Goals.

Discussion: The Secretary believes that such a concept of educational success is entirely consistent with the priority. The Secretary encourages applicants to identify and justify the elements of educational success implied in the design of their proposed research and development activities. The Secretary expects that applicants' concepts of educational success will contribute to the merits of their proposals.

Changes: None.

Comments: Thirty-two commenters recommended changes in the proposed priority's five topics for research and development activities. The commenters recommended adding topics, replacing topics, dropping topics, and either widening or narrowing the focus of the center's research. The Secretary also received numerous comments agreeing with the proposed topics.

Recommendations to drop topics or narrow the focus of the center's research were based on the opinion that the recommended change would give the center's work greater coherence, that a particular topic did not deserve the center's attention, or that the Department should be more specific about what the center should study. Recommendations to add topics or widen the center's focus were based on the opinion that the five proposed topics omitted important research issues, or that the state of existing research knowledge did not warrant the priority's being so directive.

Examples of specific research topics or questions recommended by commenters included the following: an alternative set of topics using students, teachers and classrooms, schools, and systems as the units of analysis in one systematic, coherent approach; identifying practical solutions, including alterable factors such as the school and classroom environment, links between schools, families, and communities, and other school innovations; analyzing the effects of children's health, physiological development, and nutrition on their education; understanding what cognitive and personal characteristics children bring to the learning environment; studying student motivation and incentives to learn; examining the effects of violence on children and youth and their education; investigating the relationship between teachers' gender and ethnicity and student outcomes, in light of current trends in teacher recruitment and student characteristics; studying applied learning experiences that enable students to understand abstract ideas in a practical context; and examining the relationships between resources and achievement. All of these suggestions and others were put forward on the basis of their potential to increase the understanding of what might improve educational opportunities for students placed at risk of educational failure.

Discussion: The Secretary recognizes that there is merit to many of the topics recommended for inclusion. In fact, the Secretary believes that many of these recommendations fall within the scope of the priority's topics and could be the subject of the center's research projects. The Secretary recognizes, also, the need to modify the proposed priority in order to clarify and give sharper focus to the final priority.

Changes: The Secretary has modified the priority's topics to give greater prominence to instructional arrangements, to drop the study of fade-out effects as a separate topic, to reduce the number of topics overall, and to clarify the meaning of some of the topics. The Secretary is also using the comments to revise the guidance included in the application package to provide additional suggestions to prospective applicants about addressing the mission and priority of the center.

Comments: Four commenters recommended that the center be required to collaborate or coordinate with other centers and institutions supported by the Department—e.g., laboratories and clearinghouses—in order to achieve the greatest practical benefit from the center's work.

Discussion: The Secretary believes that research and development centers should work with federally supported institutions and other entities to maximize the impact that their activities may have on improvements in the educational system. The Secretary believes that laboratories and clearinghouses certainly fit the description of the kinds of institutions with which centers should work. Instructions in the application package identify ways in which a proposed center is required to collaborate with these types of entities.

Changes: None.

Comments: Eight commenters recommended that the priority include dissemination activities in the center's functions; e.g., serving as a clearinghouse and developing dissemination strategies. One commenter stressed the importance of integrating research and dissemination activities in order to increase their effectiveness. Another commenter recommended an information system that is readily available to the classroom teacher. One commenter felt that the center should concentrate on developing dissemination strategies but should not devote significant resources to actually performing dissemination activities because other institutions could perform that function.

Discussion: The Secretary believes that dissemination plays an integral role in research and development activities that promise to have a positive impact on improving education. The Secretary

believes that the particular types of dissemination activities that will best accomplish this objective depend on (1) the nature of the research knowledge being generated and (2) the potential users of this knowledge. Instructions in the application package include guidance related to the center's responsibilities for dissemination.

Changes: The Secretary has amended the priority to explicitly identify dissemination as a part of the center's work.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

The educational needs of children and youth placed at risk of educational failure.

Under this priority, the Secretary supports one or more national research and development centers that—

• Conduct research and development activities concerning the educational needs of children and youth placed at risk of educational failure because of economic, community, and family factors, and personal experiences, including the lack of adequate school and other educational resources;

• Contribute to increasing the capacity of educational systems to provide all students with equal opportunities to learn and achieve educational success;

• Use research methods in some of their studies that involve advanced or innovative quantitative or qualitative techniques of sampling, data gathering, conceptualization and measurement of variables, data analyses, and interdisciplinary perspectives;

• Conduct one or more definitive research studies that have national implications and that will inform policy or practice across the nation; i.e., use large representative samples and rigorous scientific techniques that preclude biased results and support generalizable, replicable findings concerning the education of sizable populations of children or youth placed at risk of educational failure;

• Include research and development activities related to two or more of the following topics:

(a) Understanding how individual cognitive and emotional characteristics of children or youth placed at risk of educational failure affect how these children or youth respond to their social and educational circumstances.

(b) Creating personalized and caring educational environments.

(c) Identifying effective ways of organizing schools, classrooms, and instructional arrangements.

(d) Understanding how best to integrate all educational programs and staff development into a coherent learning environment for students placed at risk of educational failure; and

• Document, report, and disseminate their research activities in ways that will allow others to use the research results.

Applicable Program Regulations: 34 CFR parts 706 and 708.

Program Authority: 20 U.S.C. 1221e.

Dated: March 3, 1994.

Sharon Porter Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–5301 Filed 3–7–94; 8:45 am]

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federal register

Tuesday
March 8, 1994

Part VI

Department of Education

Education Research and Development Centers Program; Notice Inviting Applications for New Awards for Fiscal Year 1994

DEPARTMENT OF EDUCATION

[CFDA No.: 84.117D]

Education Research and Development Centers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To support research and development centers to conduct research and related activities.

Eligible Applicants: The following are eligible for a new award under this program: institutions of higher education, institutions of higher education in consort with public agencies or private nonprofit organizations, and interstate agencies established by compact that operate subsidiary bodies established to conduct postsecondary educational research and development.

Deadline for Transmittal of Applications: June 8, 1994.

Applications Available: March 17, 1994.

Available Funds: This Center will be awarded as a cooperative agreement. In fiscal year 1994, $700,000 is available for the first year of funding for a national research and development center to study the education of students placed at risk of educational failure. The following list indicates the estimated funding levels over the five-year project period. The funding levels for years 1 through 5 are estimates. Actual funding will depend upon the availability of funds and needs as reflected in the approved application.

First Year Funding: $4.7 Million
Second Year Funding: $5.0 Million
Third Year Funding: $5.0 Million
Fourth Year Funding: $6.0 Million
Fifth Year Funding: $7.0 Million
Five Year Total: $27.7 Million

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, and 86; (b) the regulations for this program in 34 CFR parts 706 and 708; and (c) the regulations in 34 CFR part 97.

Priority: The priority in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 708.11.

The program regulations in 34 CFR 706.20 (b) and (d) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 10 points. For this competition the Secretary distributes the 10 points as follows:

Technical Soundness (34 CFR 708.11(d)). Ten points are added to this criterion for a possible total of 30 points.

For Applications or Information Contact: Dr. Joseph Conaty, U.S. Department of Education, 555 New Jersey Avenue, NW., room 610, Washington, DC 20208–5573. Telephone: (202) 219–2079. 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.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1221e.

Dated: March 3, 1994.

Sharon Porter Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–5302 Filed 3–7–94; 8:45 am]

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federal register

Tuesday
March 8, 1994

Part VII

Department of Education

34 CFR Parts 75 and 693

Direct Grant Programs; National Early Intervention Scholarship and Partnership Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 75 and 693

RIN 1840–AB79

Direct Grant Programs; National Early Intervention Scholarship and Partnership Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations to implement the new National Early Intervention Scholarship and Partnership (NEISP) Program in accordance with the provisions in chapter 2, subpart 2, part A, title IV, of the Higher Education Amendments of 1992, enacted July 23, 1992, (Pub. L. 102–325) (1992 amendments), which amended the Higher Education Act of 1965 (HEA). These proposed regulations for the NEISP Program specify the role of the Secretary and the responsibilities of the States in the administration of the program. The proposed regulations also specify the State and student applicant eligibility requirements and the criteria by which the Secretary approves a State's application to participate in the program.

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

ADDRESSES: All comments concerning these proposed regulations should be addressed to Fred H. Sellers, U.S. Department of Education, 400 Maryland Avenue, SW., room 4018, ROB–3, Washington, DC 20202–5447.

A copy of any comments that concern information collection requirements also should be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Daniel Sullivan, U.S. Department of Education, 400 Maryland Avenue, SW., room 4018, ROB–3, 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.

SUPPLEMENTARY INFORMATION: The Secretary proposes regulations to implement the National Early Intervention Scholarship and Partnership (NEISP) Program, a new program authorized under the amended HEA. The Secretary also proposes a technical amendment to insert a reference to the NEISP Program into 34 CFR 75.60 of the regulations for the Direct Grant Programs. The Secretary proposes to make technical amendments in a separate notice of proposed rulemaking to insert references to the NEISP Program into the appropriate sections of 34 CFR part 668 of the Student Assistance General Provisions regulations. The NEISP Program provides States with Federal financial incentives to establish or maintain a program with matching State-originated funds. It provides for: (1) A scholarship component that, to the extent possible, guarantees the financial assistance necessary for eligible low-income students who graduate from high school to attend an institution of higher education, and (2) an early intervention component that uses State-wide resources, both government and private, to provide additional counseling, financial aid counseling, mentoring, academic support, outreach, and supportive services to preschool, elementary, middle, and secondary school students who are at risk of dropping out of school. These proposed regulations specify the role of the Secretary and the responsibilities of the States in administering the NEISP Program. The proposed regulations also specify State and student applicant eligibility requirements and the criteria by which the Secretary approves a State's plan for participating in the program.

Section 404C of the amended HEA provides that a participating State shall demonstrate to the satisfaction of the Secretary that the State will provide comprehensive mentoring, tutoring, outreach, and other academic and counseling services to students participating in programs under this chapter who are enrolled in preschool through grade 12. The Secretary believes that these services should be provided as early in a student's schooling as necessary to be effective. By way of example, some currently successful programs begin with classroom students at the preschool or elementary school level. However, in order to provide services at any point in a student's education, under this program the Congress also permits a State to assist students through the twelfth grade, including pre-freshman summer programs. The Secretary finds that a State should take into account existing comparable services within the State to avoid duplicating existing administrative entities and services. Therefore, under § 693.20(h) of the proposed regulations, when establishing its early intervention component, a State would be required to coordinate its efforts with existing Federal, State, local and private programs offering these services; for example, the Talent Search, Upward Bound, and Student Support Services programs and Educational Opportunity Centers, collectively known as the Federal TRIO programs.

The NEISP Program's early intervention component supports National Education Goals 2 (High School Completion), 3 (Student Achievement and Citizenship), and 4 (Science and Mathematics). The NEISP Program's scholarship component also supports National Education Goal 5 (Adult Literacy and Lifelong Learning).

Some areas in which the proposed regulations clarify or amplify the statutory requirements are explained below.

Definitions

Section 693.5(b) of the proposed NEISP Program regulations defines the terms "academic year," "award year," and "institution of higher education" as they are defined in section 481 of the HEA. These amendments to section 481 of the HEA require that the Secretary amend definitions in the Student Assistance General Provisions regulations in 34 CFR part 668. When the Secretary publishes final regulations amending these definitions, he also will amend the definitions in § 693.5(b) in the NEISP Program regulations to reference those changes.

Name of State Program

Under § 693.10(b)(2) of the proposed regulations, the Secretary proposes to require that each State desiring to participate in the program must, as a part of its plan to carry out the program, agree to name its State program the "[State name] National Early Intervention Scholarship and Partnership Program," which can be referred to as the "[State name] NEISP Program," and to name recipients of scholarships as "[State name] National Partnership Scholars." These requirements are in accord with the changes made in the 1992 amendments that require recipients of title IV, HEA student financial assistance to understand clearly that they are recipients of financial assistance provided by the Federal Government. In addition, the Secretary believes that naming recipients "[State name] National Partnership Scholars" will enhance student motivation and participation in the program by providing the prestige and recognition of a student's accomplishments that are associated with being a recipient of a national scholarship.

State Plan and Application

Section 404B of the amended HEA requires each State to submit a plan to the Secretary for review and approval that describes how the State will carry out the NEISP Program. The plan, as described in the program statute, prescribes the information and data each State must submit to the Secretary in order for the Secretary to approve the State's participation in the NEISP Program. The Secretary finds that, while some of the information required under section 404B will have to be submitted each year the State participates in the program, a significant amount of the information and data required for the State plan will have to be reported only once, in the initial fiscal year that the State wants to participate in the program. Under the proposed regulations, once a State plan has been approved by the Secretary, in subsequent fiscal years the State will not be required to submit a State plan for the review and approval of the Secretary unless the State, at its own initiative or the Secretary's initiative, must make changes to the previously approved State plan.

Therefore, to simplify and reduce the amount of reporting burden on the States, the Secretary proposes the following—

(1) For the first fiscal year that a State wants to participate in the NEISP Program, a State shall submit to the Secretary a one-time State plan containing all the information and data required under §§ 693.10, 693.11, 693.12, 693.13, and 693.20 of the proposed regulations; and

(2) In each subsequent fiscal year that a State wants to continue to participate in the NEISP Program, the State shall submit for the review and approval of the Secretary an annual application containing the information and data as required under § 693.13 of the proposed regulations.

State Agency Responsible for Administering the Program

Under the plan to administer the program required by section 404B of the amended HEA, the Secretary proposes in § 693.10(b)(1) that the Governor of each State designate the State agency that will be responsible for carrying out the NEISP Program. In doing so the Governor must designate the State agency that administers the State Student Incentive Grant (SSIG) Program, the State educational agency, or another agency that the Secretary approves. The Secretary believes that requiring the Governor of a State to designate an agency within his or her State to be responsible for the NEISP Program will ensure that program funds are allocated to an appropriate and responsible State agency and is consistent with other Federal and State-administered student financial aid programs, such as the SSIG Program.

Federal Funds Supplementing, Not Supplanting, State and Local Funds

Section 404B(b)(3) of the amended HEA requires each State in its State plan to propose provisions designed to assure the Secretary that funds provided under this part will supplement and not supplant funds expended for existing State and local early intervention and postsecondary education scholarship programs. Under § 693.13(a)(4), the Secretary proposes that on its annual application each State provide the supporting documentation to assure the Secretary that the amount of funds the State is projecting to provide under its NEISP Program for that fiscal year exceeds the amount of funds the State expended for State and local early intervention programs and State need- and non-need-based student financial grant assistance programs during the fiscal year two years prior to the fiscal year in which the State first received funds under this program.

Allotment Requirements

Section 404B(d) of the amended HEA requires that from the State's allotment calculated under section 404D, the Secretary shall disburse an amount to each State equal to no more than one-half of the total amount the State documented that it expended on its NEISP Program for the same fiscal year The Secretary proposes to collect that expenditure information from each participating State by means of an annual performance report, authorized under 34 CFR 80.40 of the Education Department General Administrative Regulations, to be submitted after the end of each NEISP Program award year

However, to be able to allot funds to eligible States at the beginning of each award year, under § 693.21(b) of the proposed regulations the Secretary will disburse to each eligible State an amount from that State's allotment equal to not more than one-half of the total amount of funds from all sources the State projects that it will expend on its NEISP Program for the fiscal year as reported on its annual application under § 693.13(a) of the proposed regulations. Under § 693.21(c) of the proposed regulations, when the Secretary disburses an NEISP Program allotment to a State on the basis of the total funds the State projects that it will expend on the NEISP Program in a fiscal year, the State may actually expend from its Federal allotment no more than one-half of the total amount of funds the State actually expends under its NEISP Program for that fiscal year.

Uses of Funds

Section 404C(b)(1) of the amended HEA requires that the Secretary shall establish by regulation criteria for determining whether comprehensive mentoring, counseling, outreach, and supportive services programs may be used to meet the requirements in section 404C(a) of the amended HEA. The Secretary proposes to provide that information in §§ 693.11, 693.13, and 693.20 of these proposed regulations.

Scholarship Funds

There is no provision for an administrative cost allowance under the scholarship component of the NEISP Program. Therefore, each participating State shall expend all Federal and State matching funds in the NEISP Program's scholarship component on scholarship assistance for NEISP Scholars.

Scholarship Amount

Section 404D(b) provides a formula for a minimum scholarship amount to be awarded to each recipient and also requires each participating State to establish its own maximum scholarship amount. The maximum scholarship amount, however, may not, when combined with a student's Federal Pell Grant award, all other Federal student financial assistance, and any other grant or scholarship assistance, exceed the student's cost of attendance. The Secretary proposes to implement these requirements under § 693.12 (e) and (g) of the proposed regulations.

Priority on Awarding Scholarships to Recipients of Federal Pell Grants

Section 404D(e) of the program statute requires that the Secretary ensure that each State place a priority on awarding NEISP Program scholarships to recipients of Federal Pell Grants. The Secretary proposes to implement this requirement in §§ 693.3(b) and 693.12(c) of these regulations. Under § 693.3(b), the Secretary believes that requiring States to award NEISP Program scholarships to low-income students attending institutions of higher education participating in the Federal Pell Grant Program helps ensure that States will place a priority on awarding NEISP Program scholarships to Federal Pell Grant recipients. The Secretary believes that the majority of institutions of higher education that participate in the Federal student financial assistance programs are participating in the Federal Pell Grant Program. As a result, the Secretary believes that requiring NEISP Program scholarships be awarded

to students attending institutions participating in the Federal Pell Grant Program will not unfairly limit educational options to NEISP scholarship recipients.

Under § 693.12(c) of the proposed regulations, the Secretary is ensuring that States place first priority on awarding NEISP Program scholarships to Federal Pell Grant recipients by requiring the States to award NEISP Program scholarships to students who have the most financial need as demonstrated by having the lowest expected family contributions and who also are recipients of Federal Pell Grant awards. The Secretary believes that these proposed regulatory requirements, while not specifically required under the statute, are consistent with the intent of the program.

Targeting Early Intervention Services to Priority Students

Section 404C(a) of the program statute requires a State to demonstrate to the Secretary the methods by which the State will target services on priority students. The Secretary proposes to implement this requirement in § 693.20(a)(2)(v) of these regulations. The Secretary plans to provide States with extensive flexibility in adopting methods for targeting services on priority students. A State must provide in its State plan a clear description of the methods a State will use to target services to priority students. Methods proposed by the State must be based on the latest available State data. Methods for targeting services on priority students may include targeting by elementary and secondary schools with high concentrations of priority students within the State, by appropriate identifiable geographic areas such as counties or school districts (including both public and private schools) with high concentrations of priority students within the State, or by other methods proposed by a State and approved by the Secretary.

Discretionary Grant Competition

Section 404E(a) of the program statute requires the Secretary to award grant funds to States under this program on a competitive basis if the program appropriation for a fiscal year is less than $50,000,000. The Secretary proposes to implement this requirement in § 693.22 of these regulations.

The Secretary proposes to conduct a grant competition for the States by means of a notice published annually in the **Federal Register** that contains the information needed by a State to apply for funds under a discretionary NEISP Program competition. The Secretary evaluates a State's application for funds under a discretionary NEISP Program competition on the basis of the extent to which the State fulfills the requirements listed in §§ 693.10, 693.11, 693.12, 693.13, and 693.20 and the selection criteria with point values listed for each criterion in § 693.22.

The Secretary is seeking to select the best possible State programs for the limited amount of discretionary grant funding available. Therefore, the Secretary believes that, if two States have similarly rated applications, the tiebreaker criteria in § 693.22(c)(4) (comprehensive State-wide early intervention and postsecondary educational scholarship program, comprehensive long-term mentoring and advising, and State grant funds for students' postsecondary education) are essential elements for States to provide to fulfill the purposes of the program.

The Secretary believes that equivalent selection criteria in § 693.22 for the scholarship component are unnecessary. The program statute and §§ 693.10 and 693.12 of the proposed regulations provide States with sufficient information concerning the scholarship component requirements and how ED will review and approve a State's plan and application under a discretionary grant competition. However, the Secretary notes that he has included in the selection criteria in § 693.22 consideration of availability of State grant aid available to National Partnership Scholars if the scholarship component is not funded. Further, the Secretary is requesting comment concerning the extent to which he should require State standards or guidelines to ensure that State scholarships will support and be available to eligible students for an extended period.

Evaluation Report

Section 404F of the program statute requires each State receiving an allotment under this part to prepare and submit to the Secretary every two years an evaluation of the early intervention component of its NEISP Program. The Secretary proposes to implement this requirement in § 693.52 of these regulations. The report must summarize and evaluate the States' activities under the program and the performance of the student participants. Each State's evaluation report design must include measures that permit the State to track all participating students' progress throughout each student's participation in the program.

The biennial evaluation report of the early intervention component of the program must at a minimum include, but is not limited to, information on the program objectives that produce useful data and that are quantifiable; the effectiveness of the State's program in meeting the purposes of the program; the effect of the program on the student recipients being served by the program, including measurable outcomes such as improved academic performance, increased postsecondary educational enrollment and retention, increased elementary and secondary school grade retention, reduced elementary and secondary school dropout rates, and reduced financial barriers to attendance at institutions of higher education; the barriers to the effectiveness of the program and recommendations for changes or improvements to the program; the cost-effectiveness of the program; the extent to which the student recipients comply with the requirements of the program; key program information listed on an annual and biennial basis; other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs; and any other information required by the Secretary to carry out the evaluation report function.

Allowable and Nonallowable Costs

The proposed allowable and nonallowable costs in §§ 693.50 and 693.51 are consistent with similar programs such as the Federal TRIO (e.g., Upward Bound, Educational Opportunity Centers, Student Support Services) programs.

Executive Order 12866

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information requirements, if any, are identified and explained elsewhere in this preamble under the heading

Paperwork Reduction Act of 1980

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Because these proposed regulations would affect only States and State agencies, the regulations would not affect small entities. State and State agencies are not "small entities" under the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

Sections 693.10, 693.11, 693.12, 693.13, 693.20, 693.22, and 693.52 of the NEISP Program proposed regulations contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

The public reporting burden for the information collection required under §§ 693.10, 693.11, 693.12, 693.13, 693.20, and 693.22 of these proposed regulations is estimated to average 1,400 hours per State response for approximately 57 respondents for a total burden of 79,800 hours for the first year of participation by all States. The reporting burden for the information collection required under § 693.52 of these proposed regulations is estimated to average 1 hour per State response for approximately 57 respondents for a total burden of 57 hours.

Organizations and individuals desiring to submit comments on the information collection requirements contained in these proposed regulations should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

The NEISP Program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for the NEISP Program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4018, ROB–3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 75

Education Department, Grant programs—education, Grant administration.

List of Subjects in 34 CFR Part 693

Grant programs—education, Postsecondary education, State administered—education, Student Aid—education, Reporting and recordkeeping requirements.

Dated: February 28, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.272, National Early Intervention Scholarship and Partnership Program)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by amending part 75 and by adding a new part 693 as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, unless otherwise noted.

§ 75.60 [Amended]

2. In § 75.60, paragraph (b)(1) is amended by adding the term "National Early Intervention Scholarship and Partnership (NEISP) Program (20 U.S.C. 1070a–21, *et seq.*)," after "(20 U.S.C. 1070a, *et seq.*),".

3. A new part 693 is added to read as follows:

PART 693—NATIONAL EARLY INTERVENTION SCHOLARSHIP AND PARTNERSHIP PROGRAM

Subpart A—General

Sec.

Subpart B—How Does a State Obtain a Grant?

Subpart C—How Does the Secretary Make a Grant to a State?

Subpart D—How Does a Student Participate in the Early Intervention Component under the NEISP Program?

Subpart E—How Does a State Award a Scholarship to a Student?

Subpart F—What Postaward Conditions Must Be Met by a State?

Authority: 20 U.S.C. 1070a–21 through 1070a–27, unless otherwise noted.

Subpart A—General

§ 693.1 What is the National Early Intervention Scholarship and Partnership Program?

Under the National Early Intervention Scholarship and Partnership (NEISP) Program, the Secretary provides grants to States to—

(a) Encourage the States to provide or maintain a guaranteed amount of financial assistance necessary to permit eligible low-income students who obtain high school diplomas or the equivalent to attend an institution of higher education; and

(b) Provide financial incentives to enable States, in cooperation with local educational agencies, institutions of higher education, community organizations, and businesses, to provide—

(1) Additional counseling, mentoring, academic support, outreach, and supportive services to preschool, elementary, middle, and secondary school students who are at risk of dropping out of school; and

(2) Information to students and their parents about the advantages of obtaining a postsecondary education and their college financing options.

(Authority: 20 U.S.C. 1070a–21)

§ 693.2 Who is eligible to participate under this program?

(a) States that meet the requirements of §§ 693.10, 693.11, 693.12, 693.13, 693.20, 693.21, and 693.22 are eligible to receive grants under this program.

(b) Under the early intervention component, students who meet the requirements of § 693.30 are eligible to participate in the State-administered programs under this part.

(c) Under the scholarship component, students who meet the requirements of § 693.40 are eligible to receive scholarships from States under this program.

(Authority: 20 U.S.C. 1070a–22 to 1070a–24)

§ 693.3 What kinds of activities may be assisted under this program?

Under the NEISP Program, a State may use its allotment under § 693.21 or § 693.22 to—

(a) Provide a variety of early intervention services such as comprehensive mentoring, counseling, outreach, and other supportive services to eligible students enrolled in preschool through grade 12, including pre-freshman summer programs; and

(b) Award scholarships to eligible low-income students for attendance at any institution of higher education participating in the Federal Pell Grant Program.

(Authority: 20 U.S.C. 1070a–22 to 1070a–24)

§ 693.4 What regulations apply to this program?

The following regulations apply to the NEISP Program:

(a) The regulations in this part 693.

(b) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) If the amount appropriated for the program is less than $50,000,000, 34 CFR part 75 (Direct Grant Programs).

(2) If the amount appropriated for the program is $50,000,000 or more, 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(c) Institutional Eligibility Under the Higher Education Act of 1965, as Amended in 34 CFR part 600.

(d) The Student Assistance General Provisions in 34 CFR part 668.

(Authority: 20 U.S.C. 1070a–21 through 1070a–27)

§ 693.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget Period
Department
Elementary school
Fiscal Year
Grant
Grantee
Local educational agency (LEA)
Private
Project
Project Period
EDGAR
Secretary
State

(b) *Definitions in Section 481 (a) and (d) of the HEA.* The following terms used in this part are defined in section 481 of the HEA:

Academic year
Award year
Institution of higher education

(c) *Definitions in subpart A of the Institutional Eligibility regulations, 34 CFR 600.1.* The following term used in this part is defined in 34 CFR 600.1:

Recognized equivalent of a high school diploma

(d) *Other definitions that apply to this part.* The following definitions also apply to this part:

At-risk student means a preschool through grade 12 student whom a State identifies as being a potential dropout from secondary or postsecondary school.

Disadvantaged student means a student who is either

(1) A low-income individual who is also a first-generation college student, or

(2) A student with disabilities.

Early intervention program means a program that provides education-related activities such as counseling, mentoring, academic support, outreach, and other supportive services, including providing information on opportunities for postsecondary student financial aid, to students enrolled in preschool through grade 12.

First-generation college student means—

(1) A student neither of whose parents completed a baccalaureate degree; or

(2) A student who regularly resides with and receives support from only one parent who did not complete a baccalaureate degree.

HEA means the Higher Education Act of 1965, as amended.

Limited proficiency in English with reference to an individual, means an individual—

(1)(i) Who was not born in the United States;

(ii) Whose native language is other than English;

(iii) Who comes from an environment in which a language other than English is most relied on for communication; or

(iv) Who is an American Indian or Alaskan Native student and comes from an environment in which a language other than English has had a significant impact on his or her level of proficiency in English; and

(2) Who, as a result of the circumstances described in paragraph (1) of this definition, is unable to learn successfully in classrooms in which instruction is in English because he or she cannot adequately understand, speak, read, or write English.

Low-income individual means an individual whose taxable family income for the year before the year in which he or she is scheduled to receive assistance under this part did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the U.S. Bureau of the Census or a resident who is considered to be a low-income resident by the State in which he or she lives.

Postsecondary education means a program of education beyond the secondary school level.

Priority student means any student within a State in preschool through grade 12 who is eligible—

(1) To be counted as attending an institution receiving Federal funds under chapter 1 of the Elementary and Secondary Education Act of 1965;

(2) To receive free or reduced-price meals under the National School Lunch Act; or

(3) To receive assistance under the Aid to Families with Dependent Children Act.

Scholarship means an award made to an individual under this part.

Secondary school, as defined under section 1471(21) of the Elementary and Secondary Education Act of 1965, means a day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

State educational agency (SEA), as defined under section 1471(23) of the Elementary and Secondary Education Act of 1965, means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

Student with a disability, as defined in section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)), means a student with a physical or mental impairment that substantially limits one or more of the major life activities of the student and thus requires special education and related services.

(Authority: 20 U.S.C. 1070a–21 through 1070a–27)

Subpart B—How Does a State Obtain a Grant?

§ 693.10 What must a State do to obtain a grant under this program?

(a) To obtain a grant, a State shall submit to the Secretary for review and approval an initial plan and annual application for carrying out the activities under the NEISP Program.

(b) The Secretary approves a State plan that—

(1) By direction of the State's Governor, designates as the State agency for administering the program under this part, either—

(i) The State agency that administers the State Student Incentive Grant Program under title IV, part A, subpart 4 of the HEA;

(ii) The State educational agency; or

(iii) Another appropriate State agency approved by the Secretary;

(2) Provides that the State program under this part shall be known as the "[insert name of the State] National Early Intervention Scholarship and Partnership Program" which may be referred to as the "[State name] NEISP Program,";

(3) Demonstrates to the satisfaction of the Secretary that the State will provide for the conduct under the State's NEISP Program of both—

(i) An early intervention component meeting the requirements under § 693.11 as evaluated by the Secretary under the criteria in § 693.20; and

(ii) A scholarship component meeting the requirements under § 693.12;

(4) Describes the administrative plan for implementing the State's NEISP Program, including those functions that will be carried out by public and private organizations; and

(5) Provides assurances that the State will—

(i) Ensure that the funds provided under this part supplement and do not supplant funds expended for State and local early intervention programs and State need- and non-need-based student financial grant assistance programs during the fiscal year 2 years prior to the fiscal year in which the State first received funds under this program;

(ii) Expend, from State, local, or private funds or other acceptable funding methods, not less than one-half of the cost of the program under this part;

(iii) Specify the methods by which such share of the costs will be paid;

(iv) Not use less than 25 percent or more than 50 percent of its total NEISP Program funds for the early intervention component, unless the State can satisfactorily demonstrate in its plan submitted to the Secretary that the State has additional means to provide scholarships to students, in accordance with the waiver provision in § 693.13(b);

(v) Expend all of the NEISP Program funds under the scholarship component only to provide scholarships to eligible students; and

(vi) Conduct and submit to the Secretary a biennial evaluation of the early intervention program assisted under this part in accordance with the requirements in § 693.52.

(c) With the exception of its initial year of participation when each State also must submit the application required under § 693.13 at the same time as the State plan under paragraph (b) of this section, the State shall submit annually an application to participate in the NEISP Program in accordance with the requirements in § 693.13.

(Authority: 20 U.S.C. 1070a–22 and 1070a–26)

§ 693.11 What requirements must be met by the State under the program's early intervention component?

(a) A State shall demonstrate to the Secretary in its plan submitted according to § 693.10(b) how its early intervention component provides services designed to meet the unique needs of the State's eligible students enrolled in preschool through grade 12, including, but not limited to, the following kinds of activities—

(1) A continuing system of mentoring and advising that—

(i) Is coordinated with the Federal and State community service initiatives; and

(ii) Includes such support services as—

(A) Instruction in reading, writing, study skills, mathematics, and other subjects necessary for success in education beyond secondary school;

(B) After-school and summer tutoring;

(C) Assistance in obtaining summer jobs;

(D) Career mentoring;

(E) Academic counseling and assistance in secondary school course selection;

(F) Financial aid counseling that provides information on the opportunities for postsecondary student financial assistance;

(G) Instruction designed to prepare students participating in the program for careers in which students from disadvantaged backgrounds are particularly underrepresented, as determined by the State; and

(H) Programs and activities specifically designed for students with limited proficiency in English.

(2) Activities designed to ensure high school completion and college enrollment of at-risk students by providing, in addition to the activities specified under paragraph (a) of this section, the following:

(i) Assessment to identify at-risk students.

(ii) Skills assessment.

(iii) Activities to encourage volunteer and parent involvement in the activities planned under this section.

(iv) Programs that involve the participation of former or current scholarship recipients as mentors or peer counselors.

(v) Personal and family counseling, including home visits.

(vi) Staff development to provide the services under this part.

(3) Activities that encourage students to complete secondary school and pursue postsecondary education by requiring each student to enter into an agreement under which the State will provide postsecondary tuition assistance to a student, during a period of time to be established by the State, if the student agrees to achieve certain academic milestones, such as—

(i) Completing the prescribed set of secondary courses required for an individual to be eligible for a Presidential Access Scholarship under chapter 3, subpart 2, part A, title IV of the HEA; and

(ii) Maintaining satisfactory academic progress according to the requirements in 34 CFR 668.7 in a postsecondary education program.

(4) Pre-freshman summer programs that—

(i) Are at institutions of higher education that also have academic support services for disadvantaged students through projects regulated by 34 CFR part 646, Student Support Services, or through comparable projects as certified by the SEA or other appropriate State agency funded by the State or other sources;

(ii) Assure the participation of students who qualify as disadvantaged students or who are eligible for comparable programs funded by the State and certified under paragraph (a)(4)(i) of this section;

(iii) Provide summer services, including—

(A) instruction in remedial, developmental, or supportive courses;

(B) counseling, tutoring, or orientation; and

(C) grant aid to students to cover pre-freshman summer costs for books, supplies, living costs, and personal expenses; and

(iv) Assure that participating students will receive financial aid during each academic year they are enrolled at the participating institution after the pre-freshman summer.

(5) Other activities as the State proposes and the Secretary approves as supportive of the purposes of the NEISP Program.

(b) The State shall indicate to the Secretary which of the following permissible service providers will conduct the early intervention component activities:

(1) Community-based organizations.

(2) Elementary or secondary schools.

(3) Institutions of higher education.

(4) Public and private agencies.

(5) Nonprofit and philanthropic organizations.

(6) Businesses.

(7) Institutions and agencies sponsoring programs authorized under the State Student Incentive Grant Program, subpart 4, part A, title IV of the HEA.

(8) Institutions and agencies sponsoring programs authorized under the Federal TRIO Programs, chapter 1, subpart 2, part A, title IV of the HEA.

(9) Religious organizations.

(10) Other organizations proposed by the State that are subsequently deemed appropriate by the Secretary.

(c) The State shall describe how the service providers listed in paragraph (b) of this section will administer the early intervention component activities.

(d) The State shall propose for review by and approval of the Secretary the methods by which it will target its early intervention services on priority students.

(Authority: 20 U.S.C. 1070a–23)

§ 693.12 What requirements must be met by the State under the program's scholarship component?

A State shall provide for a scholarship component that—

(a) As described in the State's plan approved by the Secretary under § 693.10, is closely coordinated with other Federal, State, local, and private scholarship programs within the State;

(b) Awards scholarships only to students who meet the eligibility requirements in § 693.40;

(c) Places a priority on awarding scholarships to students who will receive Federal Pell Grant awards for the academic year in which the award is being made under this part by—

(1) Selecting those eligible students with the lowest expected family contributions as calculated under part F of title IV of the HEA who will also receive Federal Pell Grants; and

(2) If the State has NEISP Program scholarship funds remaining after making NEISP awards to all of the eligible Federal Pell Grant recipients, awarding the remaining NEISP Program scholarship funds to those eligible students with the lowest expected family contributions who will not receive Federal Pell Grant awards;

(d) Awards continuation scholarships in successive award years to each student who received an initial scholarship and who continues to meet the student eligibility requirements under § 693.40;

(e) Establishes the maximum amount of a scholarship that each eligible student is to receive and ensures that no scholarship is less than the lesser of—

(1) 75 percent of the average cost of attendance, as determined under section 472, part F of the HEA, for an in-State student in a 4-year program of instruction at public institutions of higher education in the State; or

(2) The maximum Federal Pell Grant award funded for that fiscal year;

(f) Ensures that, for each recipient of a scholarship under this part, a Federal Pell Grant be awarded first, other public and private grant and scholarship assistance be awarded second, a scholarship under this part be awarded third, and then other financial assistance be awarded;

(g) Ensures that no scholarship awarded under this part, combined with other title IV, HEA financial assistance and any other grant or scholarship assistance exceeds the student's total cost of attendance, as determined under section 472, part F of the HEA;

(h) Expends all NEISP Program funds under the scholarship component, as determined according to § 693.10(b)(5)(iv), on scholarships to students;

(i) Notifies recipients of scholarships under this part that they are to be known as "[insert name of the State] National Partnership Scholars"; and

(j) Describes to the satisfaction of the Secretary the procedures the State will use to award scholarships to eligible students in the event that the State receives reduced or no Federal funding under the NEISP Program during any fiscal year.

(Authority: 20 U.S.C. 1070a–24)

§ 693.13 What information must a State provide in its annual application to receive a grant under the NEISP Program?

(a) Each State desiring to participate in the program under this part shall submit an application annually through the State agency designated to administer the NEISP Program under § 693.10(b) that contains information required by the Secretary to demonstrate that the State meets its fund-matching assurances provided for in its plan, including—

(1) The total amount of non-Federal funds, listed by each source, that the State expects to expend during the next award year that will total one-half or more of the cost of the NEISP Program such as—

(i) The amount of the scholarships paid to students from State, local, or private funds under the NEISP Program;

(ii) The amount of tuition, fees, room, or board waived or reduced for recipients of grants under the NEISP Program; and

(iii) The amount expended on documented, targeted, long-term

mentoring and counseling provided by volunteers or paid staff of nonschool organizations, including businesses, religious organizations, community groups, postsecondary educational institutions, nonprofit or philanthropic organizations, and other organizations proposed by the State and approved by the Secretary;

(2) A description of the specific methods by which the State's share of the costs under the NEISP Program will be paid;

(3) The percentage of the State's Federal allotment that it plans to expend for the early intervention component of its NEISP Program and, if the State requests a waiver from the Secretary under paragraph (b) of this section, the State shall submit supporting documentation, including the amount and source of its additional assistance;

(4) The documentation that assures the Secretary that the amount of funds provided in paragraph (a)(1) of this section will supplement and not supplant funds expended for State and local early intervention programs and State need- and non-need-based student financial grant and scholarship assistance expended during the fiscal year 2 years prior to the fiscal year in which the State first received funds under this program; and

(5)(i) Proposed changes to the initial State plan that was approved by the Secretary, according to § 693.10(b), for the review and approval of the Secretary; or

(ii) If no changes to its initial plan are proposed, an assurance that the State will continue to operate its NEISP Program according to the existing State plan approved by the Secretary under § 693.10(b).

(b) The Secretary waives the requirement in § 693.10(b)(5)(iv) and allows the State to exceed the 50 percent limit on expenditure of its Federal allotment for the early intervention component if the State can demonstrate to the satisfaction of the Secretary that the State has another adequate means to provide scholarships to eligible students under the NEISP Program.

(Authority: 20 U.S.C. 1070a–22)

Subpart C—How Does the Secretary Make a Grant to a State?

§ 693.20 What criteria does the Secretary use to determine whether a State's proposed early intervention component meets the requirements under this program?

The Secretary uses the following criteria to determine whether a State's early intervention component proposed under § 693.10(b)(3)(i) meets the requirements of § 693.11:

(a) *Plan of operation.* (1) The Secretary reviews each State's plan for information that shows the quality of the operating plan of the early intervention component.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the component;

(ii) An effective plan of management that ensures proper and efficient administration of the component;

(iii) A clear description of how the State's proposed early intervention component relates to the purpose of the program;

(iv) The way that the State plans to use its resources and personnel to achieve the objectives of the component;

(v) A clear description of the methods that the State will use to target early intervention services to priority students. The State must base the proposed methods on the latest available State data. The State may target services on priority students by—

(A) Elementary and secondary schools with high concentrations of priority students within the State;

(B) Appropriate identifiable geographic areas such as counties or school districts (including both public and private schools) with high concentrations of priority students within the State; or

(C) Other methods proposed by a State and approved by the Secretary;

(vi) A clear description of the comprehensive long-term mentoring and advising that the State plans to provide to eligible students; and

(vii) The extent to which other State grant funds are available to eligible NEISP students for postsecondary educational scholarships if the Federal scholarship component of the program is unfunded or reduced.

(b) *Quality of key personnel.* (1) The Secretary reviews each State plan for information that shows the qualifications of the key personnel the State plans to use to administer its early intervention component.

(2) The Secretary looks for information that shows—

(i) The qualifications of the director of the early intervention component;

(ii) The qualifications of each of the other key personnel to be used in the component; and

(iii) The amount of time each person referred to in paragraphs (b)(2)(i) and (ii) of this section will spend working in the activities under this component.

(3) To determine the qualifications of the key personnel, the Secretary considers evidence of past experience and training in fields related to the objectives of the early intervention component as well as other information the State provides.

(c) *Budget and cost effectiveness.* (1) The Secretary reviews each State's plan for information that shows that the early intervention component has an adequate budget and is cost-effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the early intervention component activities; and

(ii) Costs are reasonable in relation to the activities under the component.

(3) The Secretary reviews the State's budget for the early intervention component to verify that not more than 50 percent of the State's allotment is projected to be spent on its early intervention component unless the State requests and is granted a waiver under § 693.13(b).

(d) *Adequacy of resources.* (1) The Secretary reviews each State's plan for information that shows that the State plans to devote adequate resources to its early intervention component.

(2) The Secretary looks for information that shows—

(i) The facilities that the State plans to use are adequate; and

(ii) The equipment and supplies that the State plans to use are adequate.

(e) *Need for the program.* (1) The Secretary reviews each State's plan for information that shows the need for the early intervention component and the methods for targeting its early intervention component activities on eligible students.

(2) The Secretary looks for information that shows—

(i) The number and percentage of students who are eligible to be served by the State's early intervention component, including students who are priority students and students who are disadvantaged;

(ii) The extent to which the State documents its need for the services and activities that the State proposes to provide under its early intervention component;

(iii) The ratio of secondary school counselors to all students and to early intervention eligible students, if the data is available;

(iv) For each of the 3 preceding years, if available, the estimated dropout rates for the State, including the dropout rate for all students and for students eligible for the early intervention component as proposed by the State; and

(v) For each of the 3 preceding years, if available, the estimated number and percentage of students in the State who

enrolled in postsecondary institutions for—

(A) All students who were eligible to enroll; and

(B) Students who would have been eligible for the State's proposed early intervention component.

(f) *Likelihood for success.* (1) The Secretary reviews each State plan for information that shows the likelihood of success of its early intervention component.

(2) The Secretary looks for information that shows the extent to which the State's early intervention component is likely to—

(i) Enable the participants to develop academic skills, such as reading, writing, mathematics, and study skills, that are essential for postsecondary education;

(ii) Improve academic skills and motivate the participants to complete a secondary educational program and subsequently gain admission to postsecondary education institutions; and

(iii) Increase the secondary and postsecondary readmission rates of those participants who have not completed secondary or postsecondary education.

(3) The Secretary also looks for information that shows how comprehensively the State's proposed early intervention component—

(i) Identifies and selects eligible participants;

(ii) Diagnoses each participant's need for academic support in order to successfully pursue a program of postsecondary education;

(iii) Develops a plan of program support to improve each participant's skills; and

(iv) Provides the services and activities listed in § 693.11(a) that relate to the goals of the NEISP Program.

(g) *Public and private support.* (1) The Secretary reviews each State's plan for information that shows how the State will put in place a partnership of public and private organizations within the State to administer the early intervention component of the program under this part.

(2) The Secretary looks for information that shows—

(i) The extent to which the State has received and has included in its plan written commitments by organizations that will provide early intervention services under § 693.11(b); and

(ii) The existence of a plan to inform the residents of the State of the NEISP Program services and eligibility criteria.

(h) *Coordination with other early intervention activities.*

(1) The Secretary reviews each State's plan for information that shows how the State will coordinate its early intervention component with existing early intervention activities within the State.

(2) The Secretary looks for information that shows—

(i) The extent to which the State has investigated early intervention program activity and included in its plan the number and types of currently operating public and private early intervention programs within the State;

(ii) The extent to which the State's proposed plan will supplement existing Federal, State, local, and private early intervention programs within the State, such as the Federal Head Start, Chapter 1 Program in Local Educational Agencies, and TRIO programs; and

(iii) The written plans and commitments submitted to the State by other early intervention program providers that the State plans to use as either early intervention service providers under § 693.11(b) or as support organizations for those service providers.

(i) *Evaluation report plan.* (1) The Secretary reviews each State's plan to evaluate the quality of the proposed biennial evaluation report of the early intervention component of the program.

(2) The Secretary looks for information that shows—

(i) The quality of the design of the component;

(ii) The extent that the methods of evaluation are appropriate for the program and the extent they are objective and produce useful data that are quantifiable;

(iii) The State's commitment to design an evaluation report to measure objectively performance against, at a minimum, the following standards:

(A) The effectiveness of the State's program in meeting the purposes of the program.

(B) The effect of the program on the student recipients being served by the program.

(C) The barriers to the effectiveness of the program and recommendations for changes or improvements to the program.

(D) The cost-effectiveness of the program.

(E) The extent to which the student recipients comply with the requirements of the program; and

(iv) Any other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs.

(Authority: 20 U.S.C. 1070a-23)

§ 693.21 How does the Secretary allot funds to a State?

(a) If the amount appropriated for the program under this part for a fiscal year is $50,000,000 or more, the Secretary allots to each State that has submitted an approved plan under § 693.10 and an approved application under § 693.13, an amount that bears the same ratio to the total appropriation as the amount allocated to the LEAs in the State under 34 CFR part 200 bears to the total amount allocated to all LEAs in all States using the most recently available data.

(b) If the amount appropriated for the program under this part for a fiscal year is less than $50,000,000, the Secretary allots funds to each State in accordance with the provisions in § 693.22.

(c) From the allotment calculated in this section, the Secretary disburses to a State an amount equal to not more than one-half of the total amount of funds from all sources the State projects that it will expend on its NEISP Program for a fiscal year as reported on its annual application under § 693.13(a).

(d) A State may expend from its Federal allotment no more than one-half of the total amount of funds the State expends under its NEISP Program for that fiscal year.

(Authority: 20 U.S.C. 1070a-25)

§ 693.22 How does the Secretary allot funds to States on a competitive basis?

(a) The Secretary allots funds to States under this program on a competitive basis if the program appropriation for a fiscal year is less than $50,000,000.

(b) The Secretary conducts a grant competition for the States by means of a notice published in the **Federal Register** that contains the information needed by a State to apply for funds under a discretionary NEISP Program competition. The Secretary evaluates a State's application for funds under a discretionary NEISP Program competition on the basis of the extent to which the State fulfills the requirements listed in §§ 693.10, 693.11, 693.12, 693.13, and 693.20, and the selection criteria in this section.

(c)(1) The Secretary uses the selection criteria in paragraph (d) of this section to evaluate applications for grants under this program.

(2) The maximum score, not including prior grant recipient priority points in paragraph (d)(12) of this section, for all of these criteria is 140 points.

(3) The maximum score for each criterion is indicated in parentheses in paragraph (d).

(4) In the final selection of similarly rated applications, the Secretary

considers the extent to which a State provides—

(i) A comprehensive State-wide early intervention and postsecondary educational scholarship program;

(ii) Eligible students with comprehensive long-term mentoring and advising; and

(iii) Eligible students with State grant funds for their postsecondary education as compared to the other States who apply for grant funds.

(d)(1) *Need for the program.* (20 points) The Secretary reviews each State's application for information that shows the need for the State-wide early intervention component and the methods for targeting its early intervention component activities on eligible students including consideration of—

(i) The number and percentage of students who are eligible to be served by the State's early intervention component, including students who are priority students and students who are disadvantaged;

(ii) The extent to which the State documents its need for the services and activities that the State proposes to provide under its early intervention component;

(iii) The ratio of secondary school counselors to all students and to early intervention eligible students, if the data is available;

(iv) For each of the three preceding years, if available, the estimated dropout rates for the State, including the dropout rate for all students and for students eligible for the early intervention component as proposed by the State; and

(v) For each of the three preceding years, if available, the estimated number and percentage of students in the State who enrolled in postsecondary institutions for—

(A) All students who were eligible to enroll; and

(B) Students who would have been eligible for the State's proposed early intervention component; and

(vi) Describes the procedures the State will use to award postsecondary education scholarships to eligible students in the event that the State receives reduced or no Federal funding under the NEISP Program during any fiscal year.

(2) *Plan of operation.* (30 points) The Secretary reviews each State's application for information that shows the quality of the operating plan of the State-wide early intervention component, including—

(i) (3 points) The quality of the design of the component;

(ii) (3 points) An effective plan of management that ensures proper and efficient administration of the component;

(iii) (3 points) A clear description of how the State's proposed early intervention component relates to the purpose of the program;

(iv) (3 points) The way that the State plans to use its resources and personnel to achieve the objectives of the component;

(v) (3 points) A clear description of the methods that the State will use to target early intervention services to priority students. The State must base the proposed methods on the latest available State data. The State may target services on priority students by—

(A) Elementary and secondary schools with high concentrations of priority students within the State;

(B) Appropriate identifiable geographic areas such as counties or school districts (including both public and private schools) with high concentrations of priority students within the State; or

(C) Other methods proposed by a State and approved by the Secretary;

(vi) (7 points) A clear description of the comprehensive long-term mentoring and advising that the State plans to provide to eligible students; and

(vii) (8 points) The extent to which other State grant funds are available to eligible NEISP students for their postsecondary education if the Federal scholarship component of the program is unfunded or reduced.

(3) *Quality of key personnel.* (10 points) (i) The Secretary reviews each State application for information that shows the qualifications of the key personnel the State plans to use to administer its State-wide early intervention component including—

(A) The qualifications of the director of the early intervention component;

(B) The qualifications of each of the other key personnel to be used in the component; and

(C) The amount of time each person referred to in paragraphs (d)(3)(i) (A) and (B) of this section will spend working in the activities under this component.

(ii) To determine the qualifications of the key personnel, the Secretary considers evidence of past experience and training in fields related to the objectives of the early intervention component as well as other information the State provides.

(4) *Budget and cost effectiveness.* (5 points) The Secretary reviews each State's application for information that shows that the early intervention component has an adequate budget and is cost-effective including—

(i) The budget for the project is adequate to support the early intervention component activities; and

(ii) Costs are reasonable in relation to the activities under the component.

(5) *Adequacy of resources.* (5 points) The Secretary reviews each State's application for information that shows that the State plans to devote adequate resources to its early intervention component including—

(i) The facilities that the State plans to use are adequate; and

(ii) The equipment and supplies that the State plans to use are adequate.

(6) *Likelihood for success.* (20 points) The Secretary reviews each State application for information that shows the extent to which the State's early intervention component is likely to—

(i) Enable the participants to develop academic skills, such as reading, writing, mathematics, and study skills, that are essential for postsecondary education;

(ii) Improve academic skills and motivate the participants to complete a secondary educational program and subsequently gain admission to postsecondary education institutions;

(iii) Increase the secondary and postsecondary readmission rates of those participants who have not completed secondary or postsecondary education;

(iv) Identify and select eligible participants;

(v) Diagnose each participant's need for academic support in order to successfully pursue a program of postsecondary education; and

(vi) Develop a plan of program support to improve each participant's skills.

(7) *Public and private support.* (15 points) The Secretary reviews each State's application for information that shows how the State will put in place a partnership of public and private organizations within the State to administer the early intervention component of the program including—

(i) The extent to which the State has received and has included in its plan written commitments by organizations that will provide early intervention services; and

(ii) The existence of a plan to inform the residents of the State of the NEISP Program services and eligibility criteria.

(8) *Coordination with other early intervention activities.* (15 points) The Secretary reviews each State's application for information that shows how the State will coordinate its early intervention component with existing early intervention activities within the State including—

(i) The extent to which the State has investigated early intervention program activity and included in its plan the number and types of currently operating public and private early intervention programs within the State;

(ii) The extent to which the State's proposed plan will supplement existing Federal, State, local, and private early intervention programs within the State, such as the Federal Head Start, Chapter 1 Program in Local Educational Agencies, and TRIO programs; and

(iii) The written plans and commitments submitted to the State by other early intervention program providers that the State plans to use as either early intervention service providers or as support organizations for those service providers.

(9) *Willingness to overmatch.* (10 points) The Secretary reviews each State's application to determine whether the State is willing to contribute more than one-half the cost of the program and the extent to which the State will overmatch its Federal allotment.

(10) *Evaluation report plan.* (10 points) The Secretary reviews each State's application to evaluate the quality of the proposed biennial evaluation report of the early intervention component of the program including—

(i) The quality of the design of the component;

(ii) The extent that the methods of evaluation are appropriate for the program and the extent they are objective and produce useful data that are quantifiable; and

(iii) The State's commitment to design an evaluation report to measure objectively performance against, at a minimum, the following standards:

(A) The effectiveness of the State's program in meeting the purposes of the program.

(B) The effect of the program on the student recipients being served by the program.

(C) The barriers to the effectiveness of the program and recommendations for changes or improvements to the program.

(D) The cost-effectiveness of the program.

(E) The extent to which the student recipients comply with the requirements of the program; and

(iv) Any other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs.

(11) *Prior experience.* (20 points) In any award year subsequent to the 1994–95 award year, the initial year for which Federal funds were appropriated for this program, the Secretary gives priority to each State applicant that has conducted a NEISP Program within the fiscal year prior to the fiscal year for which the State applicant is applying in accordance with the following procedures:

(i) To determine the number of priority points to be awarded each eligible State applicant, the Secretary considers the State's prior experience of program participation in accordance with paragraphs (d)(11) (ii) and (iii) of this section.

(ii) The Secretary may add from one to twenty points to the point score obtained on the basis of the selection criteria, based on the State applicant's success in meeting the administrative requirements and programmatic objectives of paragraph (d)(11)(iii) of this section.

(iii) The Secretary—based on information contained in one or more of the following: performance reports, audit reports, site visit reports, program evaluation reports, the previously funded application, the negotiated program plan or plans, previous State matching funds, and the application under consideration—considers information that shows—

(A) (5 points) The extent to which the State's program has served the number of student participants it was funded to serve;

(B) (5 points) The extent to which the State's program has achieved the goals and objectives as stated in the previously funded application or negotiated program plan;

(C) (5 points) The extent to which the State has met the administrative requirements—including recordkeeping, reporting, and financial accountability—under the terms of the previously funded award; and

(D) (5 points) The extent to which the State has provided funds to match its Federal allotment.

(e) The Secretary disburses to each State selected in the competition conducted under paragraph (b) of this section an amount equal to not more than one-half of the total amount of funds from all sources the State projects that it will expend on its NEISP Program for a fiscal year as reported on its annual application under §693.13(a)(1).

(Authority: 20 U.S.C. 1070a–25)

Subpart D—How Does a Student Participate in the Early Intervention Component Under the NEISP Program?

§ 693.30 What are the requirements for a student to be a participant in the early intervention component of this program?

The State agency administering the NEISP Program, as approved by the Secretary under § 693.10(b)(1), shall select students in preschool through grade 12 to participate in the State's early intervention component, each of whom—

(a)(1) Is a citizen or a national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Trust Territory of the Pacific Islands;

(b) Is, at the time of initial selection, a priority student, an at-risk student, a disadvantaged student, or a student with a limited proficiency in English;

(c) Has a need for academic support, as determined by the State, to pursue his or her education successfully;

(d) Resides within the State;

(e) Is not currently enrolled in a program of postsecondary education;

(f) Meets such other criteria as the State includes in its plan in order to meet the unique needs of the State and that are approved by the Secretary; and

(g) For an otherwise eligible student who is attending secondary school, is a student whom the State determines can reasonably be expected to meet the student eligibility requirements of 34 CFR 668.7 for Federal student financial assistance and such other requirements as necessary to qualify for State, local, or private student financial assistance, at such time as the student enrolls in postsecondary education.

(Authority: 20 U.S.C. 1070a–23)

Subpart E—How Does a State Award a Scholarship to a Student?

§ 693.40 What are the requirements for a student to receive a scholarship under this program?

To be eligible for a scholarship under the scholarship component of this program, a student must—

(a) Apply for the scholarship by following the application procedures and deadlines established by the State agency approved by the Secretary under § 693.10(b)(1) to administer the NEISP Program in the State in which the individual resides;

(b) Meet the relevant eligibility requirements contained in 34 CFR 668.7;

(c) Be less than 22 years old at the time his or her first scholarship is awarded;

(d) Be enrolled or accepted for enrollment in a program of instruction at an institution of higher education that is located within the State's boundaries, except that a State, at its option, may offer such a scholarship to a student who attends an eligible institution of higher education outside of the State; and

(e)(1) Have participated in the early intervention component of the program under this part; or

(2) Be a student whom the State documents as having successfully participated in a Federal TRIO program funded under chapter 1, subpart 2, part A of title IV of the HEA as determined by an administrator of the appropriate Federal TRIO program in which the student participated.

(Authority: 20 U.S.C. 1070a–24)

Subpart F—What Postaward Conditions Must Be Met by a State?

§ 693.50 What are allowable costs attributable to administration of the early intervention component?

A State may use its NEISP Program funds for the following allowable costs not specifically covered by 34 CFR parts 76 or 80 that are reasonably related to carrying out the early intervention component of the NEISP Program:

(a) In-service training of project staff.

(b) Transportation and meal costs for participants and staff for—

(1) Approved visits to postsecondary educational institutions in the area;

(2) Participation in "College Days" and "College Fair" activities; and

(3) Field trips to observe and meet with people who are employed in various career fields and who can act as role models for early intervention participants.

(c) Purchasing testing materials.

(d) Admission fees, transportation, and other costs necessary to participate in field trips, attend educational activities, visit museums, and attend other events that have as their purpose the intellectual, social, and cultural development of early intervention participants.

(e) Courses in English language instruction for participants with limited proficiency in English, if these classes are limited to early intervention component participants and if these classes are not otherwise available to those participants.

(f) For participants in an early intervention residential summer activity, room and board—computed on a weekly basis—not to exceed the weekly rate a host institution charges regularly enrolled students at the institution.

(g) Room and board for those people responsible for dormitory supervision of early intervention component participants during a residential summer activity.

(h) Transportation costs of early intervention component participants for regularly scheduled component activities.

(i) Transportation, meals, and overnight accommodations for staff members if they are required to accompany participants in program activities such as field trips.

(j) Costs of remedial and special classes if—

(1) These classes are limited to early intervention component participants; and

(2) Identical instruction is not readily available through another Federal program or a State, local, or privately funded program.

(Authority: 20 U.S.C. 1070a–22)

§ 693.51 What are nonallowable costs that may not be charged to administration of the early intervention component?

A State may not use its NEISP Program funds for costs incurred for the early intervention component of the NEISP Program such as—

(a) Duplication of services that are available to participants through—

(1) State, local, or private sources not included in the State plan under § 693.11; or

(2) Other Federal programs, such as projects under the Federal TRIO programs;

(b) Research not directly related to the evaluation or improvement of the program;

(c) Purchase of any equipment, unless the State demonstrates to the Secretary's satisfaction that purchase is less expensive than renting or leasing;

(d) Meals for program staff except as provided in § 693.50.

(e) Clothing;

(f) Construction, renovation, or remodeling of any facilities; or

(g) Tuition, stipends, or any other form of student financial support for program staff.

(Authority: 20 U.S.C. 1070a–22)

§ 693.52 What requirements must a State meet in preparing and submitting an evaluation report?

(a) Each State receiving an allotment under this part shall prepare and submit to the Secretary every two years an evaluation of the early intervention component of its NEISP Program. The report must summarize and evaluate a State's activities under the program and the performance of the student participants. Each State's evaluation report design must include measures that permit the State to track all participating students progress throughout each student's participation in the program.

(b) The biennial evaluation report of the early intervention component of the program must include, but is not limited to—

(1) Quantifiable information on the extent to which the State's program is fulfilling the program objectives;

(2) The effect of the program on the student recipients being served by the program, including measurable outcomes such as improved academic performance, increased postsecondary education enrollment and retention, increased elementary and secondary school grade retention, reduced elementary and secondary school dropout rates, and reduced financial barriers to attendance at institutions of higher education;

(3) The barriers to the effectiveness of the program and recommendations for changes or improvements to the program;

(4) The cost-effectiveness of the program;

(5) The extent to which the student recipients comply with the requirements of the program;

(6) Key program information listed on an annual and biennial basis;

(7) Other pertinent program measurements concerning the early intervention component that the State believes would be useful to the Secretary, which may be displayed through analytical charts, tables, and graphs; and

(8) Any other information required by the Secretary in order to carry out the evaluation report function.

(Authority: 20 U.S.C. 1070a–26)

[FR Doc. 94–5190 Filed 3–7–94; 8:45 am]

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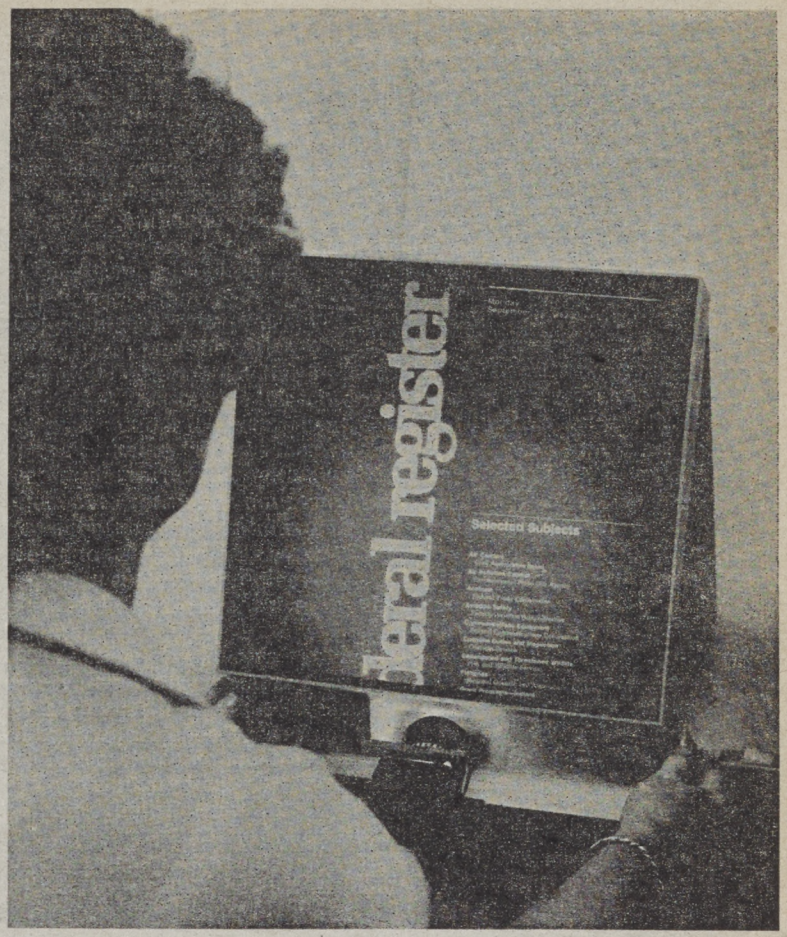

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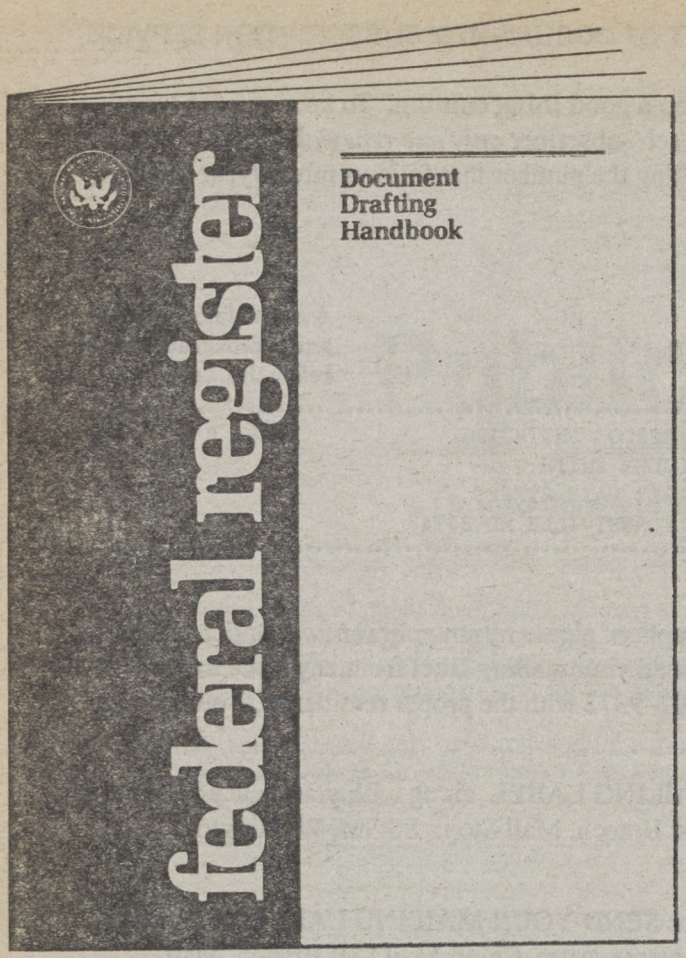

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